SUPREME COURT OF THE UNITED STATES.

No. 201.

THE COASTWISE COMPANY, CLAIMANT OF THE STEAMER ALABAMA, &c., APPELLANT,

vs.

NICHOLAS DE LAS CASAS.

No. 202.

NICHOLAS DE LAS CASAS, APPELLANT,

vs.

THE STEAMER ALABAMA, &c. THE COASTWISE COMPANY, CLAIMANT, AND WILLIAM E. GLADWISH, CLAIMANT OF THE STEAM-TUG GAME COCK.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Libel	1	1
Stipulations for libellant's costs	4	2
Process	6	3
Alias process	8	4
Claim of owners of Alabama	10	5
Claim of owners of Game Cock	11	6
Stipulation for bonding Alabama	12	7
bonding Game Cock	13	7
costs Alabama	14	8
value Alabama	15	9
costs Game Cock	17	10
value Game Cock	19	10
Answer of Alabama	20	11
Answer of Game Cock	25	14
Judge Blatchford's minutes on hearing	27	15

LIBELLANT'S TESTIMONY.

	Original.	Print.
George T. Watson (pilot)	30	15
Deposition of Bartolemé Mathew (mate)	37	20
Luciano Diez (major domo)	44	24
Miguel Martin (seaman)	46	25
Francisco Rodriquez (seaman)	49	27
José Vidal (at wheel)	53	29
Blaz Santana (seaman)	56	30
Ignacio Garcia Castro (seaman)	58	31
José Antonio Cabrera (cook)	60	38
José Perez (sailor)	62	34
Mariano Sanchez (seaman)	65	36
Juan Antonio Hernandez (seaman)	67	38
Manual Juarez (seaman below)	69	39
Gabriel Lorenzo (seaman below)	70	39
José Maria Cabrera (seaman below)	71	40
Germino Perez (seaman)	72	40
Miguel de Las Casas (captain)	75	42
Description of Ninfa	84	48

EVIDENCE FOR GAME COCK.

William H. Mills (engineer)	30	17
John Riley (deck hand)	31	17
William A. Hermance captain of tug-boat)	34	19

EVIDENCE FOR ALABAMA.

John Martino (pilot)	32	17
Deposition of John Pullen (quartermaster)	88	49
Otis Pendleton (first officer)	91	51
George W. White (engineer)	94	53
Peter Madsen (at wheel)	96	54
George F. Smith (second assistant engineer)	99	56
James E. Shafer (chief engineer)	101	57
Interest decree for libellant and order of reference	104	59
Stipulation as to value of Spanish money	105	59

LIBELLANT'S TESTIMONY ON REFERENCE.

Michael Morrow	107	60
Richard Poillon	108	61
Samuel C. Shepherd	110	62
Deposition of Edwardo Morales	142	81
Rafael Garcia	144	83
Eloy Felipi Camacho	146	84
John Petersen	151	87
Commission and instructions to commissioners	155, 156	89
Interrogatories and cross-interrogatories	161, 163, 165	92, 94, 95
Deposition of Mariano Cabrera Hernandez	168	96
Nicholas de Las Casas Lorenzo	176	101
Cayetona Felippe Cardenas	186	106
José Ana Rodriquez Gonzalez	190	108
Ignacio Rodriquez Gonzalez	193	110
José Buenamuerte Gonzalez	19	112
José Mendoza Morales	200	114
José Miguel de Las Casas Lorenzo	203	116

EVIDENCE FOR ALABAMA ON REFERENCE.

	Original.	Print.
Samuel H. Pine (recalled)	111, 120	62, 68
Henry Steers	114	65
Miguel de Las Casas	120	68
Daniel N. Carrington	122	69
Frederick C. Schmidt	128	73
Gustavus F. Dickman	130	74
Samuel Harding	131	75
Henry Gaines	134	77
Thomas T. Taylor	136	78
Vernon H. Brown	138	79
John W. Carrington	140	80
Michael Morrow	141	81
Commissioner's first report	206	118
Exceptions to commissioner's first report	209	119
Order allowing exceptions	212	121
LIBELLANT'S TESTIMONY ON SECOND REFERENCE.		
Ambrose Snow	214	122
Benjamin J. Wenberg	219	125
William D. Goff	225	128
Richard Poillon	231	131
EVIDENCE FOR ALABAMA ON SECOND REFERENCE.		
George W. Brown	233	133
Charles McDonald	235	135
Edward C. Perry	239	136
Walter R. T. Jones	243	139
Charles T. McDonald (recalled)	244	139
Thomas Henry Doubleday	248	142
Claimant's Exhibit No. 1	251	143
Claimant's Exhibit No. 2	251	143
List of mate's goods in Ninfa	252	144
Weather report—Exhibit 18	253	145
Sandy Hook telegraph report	257	148
Commissioner's second report	258	148
Exceptions to commissioner's second report	266	153
Final decree confirming second report	266	153
Notice of appeal of Alabama	269	154
Notice of appeal of Game Gock	270	155
Petition of appeal of Alabama	271	155
Bond for costs and damages on appeal	274	157
Deposition of Joseph Limeburner	277	158
John Martino	289	163
John F. Patterson	312	173
Hearing in United States circuit court	318	176
Opinion, Judge Woodruff	320	177
Decree	327	179
Petition and appeal (Coastwise Company)	333	180
Bond on appeal (Coastwise Company)	338	182
Citation (Coastwise Company)	340	183
Appeal (Nicholas de Las Casas)	342	184
Bond on appeal (Nicholas de Las Casas)	350	186
Citation (Nicholas de Las Casas)	354	188
Petition of appeal (W. E. Gladwish)	356	188
Citation (W. E. Gladwish)	362	190
Clerk's certificate	364	191

1 To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York.

The libel of Nicholas de las Casas, of Palma, in the Canary Islands, the sole and only owner of the bark Ninfa de los Mares, against the steamer Alabama, her engines, machinery, boats, tackle, apparel, and furniture, and against the steam tug-boat Game Cock, her engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest in either of the said vessels, in a cause of collision, civil and maritime, alleges and propounds as follows:

First. That at the time of the collision hereinafter set forth this libellant was the sole and only owner of the Spanish bark Ninfa de los Mares, whereof was master, Miguel de las Casas.

Second. That on December 15, 1865, the said bark being on a voyage from Havana, in the island of Cuba, to the port of New York, and being then tight, staunch, and strong, and well and sufficiently manned, apparelled, and equipped, in the command of a competent master, and with a full and sufficient crew, was being towed up the Narrows from the Atlantic Ocean to the harbor of New York, by the said tug-boat Game Cock, which at or about one o'clock of that day was, by arrange-
2 ment with those in charge of her, engaged by the master of the said bark well and safely to tow her up to the harbor of New York.

Third. That about six o'clock in the evening of December 15, 1865, the time of the collision hereinafter mentioned, the said tug-boat Game Cock, having the said bark in tow by a hawser astern, had reached a point in the Narrows within about 200 yards of the shore, and a little below Fort Richmond, on the Staten Island side of the Narrows, and some 10 or 15 minutes previously the port light of a steamer, which afterwards proved to be the steamer Alabama, was observed from the said bark bearing from 1½ to 2 points on her starboard bow and apparently approaching in an opposite direction.

That the night was clear; the bark had her lights set, a green light on her starboard, and a red light on her port quarter, just abaft her mizzen rigging; and that her course was about north to north half east, the movement of the bark being wholly dependent on the said tug-boat.

That a few minutes before the said collision a double whistle was heard from the said tug-boat, which was blown as a signal for the Alabama to pass the said tug-boat and bark on the starboard side, and for the said bark to starboard her wheel, and that the said tug-boat would starboard her wheel, which, as this libellant is informed by those in charge of her, was done; but that instead of keeping clear of the said bark or passing her on one or the other side, as she should have done, the said Alabama came right on into the said bark, striking her with such force on her starboard bow forward of her fore rigging as to cut her to the water's edge, and to cause her to sink within 15 or 20 minutes in deep water, though the said bark, by starboarding her wheel in obedience to the signal of the said tug-boat, did all that she could to avoid the said collision.

3 Fourth. That the said collision happened without any fault, negligence, carelessness, or improper seamanship on the part of the said bark, or those in charge of her, she being powerless to do anything more than she so did to prevent the same; but that the same happened wholly through the carelessness, mismanagement, and improper seamanship of those in charge at the time of the said steamer, and of the said tug-boat, in suffering their respective vessels to approach so near

each other, and then on the part of those in charge of the said tug-boat in permitting the said bark to be so hit; and on the part of those in charge of the said steamer in permittting her to so hit the said bark; and in not slowing, stopping, or in some other way so manœuv'ring as to avoid her.

Fifth. That the said bark was at the time of the said collision worth fifty-one thousand dollars; that there was on board of her belonging to this libellant at the time stores, gold coin, instruments, and other property of the value o f sixty-eight hundred dollars, and that there was also on said bark clothing and other property of her said master of the value of nine hundred dollars, and also of the mate of the value of twenty-two hundred dollars, which they desire to recover herein; and all of which became totally lost by the said collision, except in so far as the same may be rescued from their said wrecked condition. That though this libellant has caused immediate proceedings to be taken to raise and save said wrecked property, the result of such proceedings is very uncertain, and if the said vessel and property shall be raised it will be at great expense, and the said property will be in so damaged a condition and of such little value as not materially to diminish the loss by the said collision, making therefore the entire damage sustained by the said collision not less than sixty thousand nine hundred dollars.

Sixth. That the said steamer and the said tug-boat are now within the harbor of New York, and within the jurisdiction of this honorable court.

4 Seventh. That all and singular the premises are true.

Wherefore this libellant prays that process in due form of law may issue against the said steamer Alabama, her engines, machinery, boats, tackle, apparel, and furniture, and against the said tug-boat Game Cock, her engines, machinery, boats, tackle, apparel, and furniture, and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid with costs, and for such other or further order and relief in the premises as may seem just.

MIGUEL DE LAS CASAS.

Sworn to before me this 21st day of December, 1865.

A. C. WILLMARTH,
Notary Public.

[U. S. int. rev. stamp, 5 cents, cancelled.]

MAN & PARSONS, *Libellant's Proctors.*
JNO. E. PARSONS, *Advocate.*

(Endorsed:) U. S. district court. Nicholas de las Casas against the Steamer Alabama and Tug-boat Game Cock, &c. Libel. Man & Parsons, libellant's prs. Filed Dec. 21, 1865.

District court of the United States for the southern district of New York.

Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the 21st day of December, 1865.

Whereas a libel was filed in this court on the twenty-first day December, in the year of our Lord one thousand eight hundred and sixty-five, by Nicholas de las Casas against the steamer Alabama, her engines, tackle, &c., and against the steam tug-boat Game Cock,

5 her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamer and tug may be con-

demned and sold to pay the demands of libellant; and the said libellant, and Carlos Marti and Leopold Peugnet, sureties, parties hereto, hereby consen*sen*ting and agreeing that, in case of default or contumacy on the part of the libellant or his sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

NICHOLAS DE LAS CASAS,
Per MIGUEL DE LAS CASAS.
CARLOS MARTI.
LEOPOLD PEUGNET.

Taken and acknowledged this 21st day of December, 1865, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Carlos Marti and Leopold Peugnet, parties to the above stipulation, being duly sworn, each doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

CARLOS MARTI.
LEOPOLD PEUGNET.

Sworn to this 21st day of December, 1865, before me.

U. S. Commissioner.

Recorded the 21st day of December, 1865.

Clerk.

6 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 21st day of December, in the year of our Lord one thousand eight hundred and sixty-five, by Nicholas de las Casas against the steamer Alabama, her engines, tackle, &c., and against the steam-tug-boat Game Cock, her engine, tackle, &c., (collision, $6,000,) for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer and steam-tug, or vessels, their engines, tackle, &c., may be cited in general and special to answer the premises; and all proceedings being had, that the said steamer and steam-tug, or vessels, their engines, tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamer and

steam-tug, or vessels, their engines, tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 9th day of January, 1866, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that
7 behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this 21st day of December, in the year of our Lord one thousand eight hundred and sixty-five, and of our Independence the ninetieth.

[L. S.] GEO. F. BETTS, *Clerk.*

MAN & PARSONS,
Proctors for Libellant.

[U. S. rev. stamp, 50 c., cancelled.]

In obedience to the within monition, I attached the therein described, on the day of , and have given due notice to all persons claiming the same, that this court will, on the day of inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

U. S. Marshal.

Dated , 18 .
Not found.

R. MURRAY,
U. S. Marshal.

JANUARY 9, 1866.

(Endorsed:) Vol. 19, page 356. Southern district of New York. United States district court. Nicholas de las Casas vs. the Steamer Alabama and the Tug-boat Game Cock, &c. Monition ret'ble January 9, 1866. Man & Parsons, proctors for libellant, 64 Wall street. Filed January 9, 1866. I hereby depute P. Miller to execute the within process. Dated December 21, 1865. R. Murray, U. S. marshal. E 150. Marks 4.

8 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the 21st day of December, in the year of our Lord one thousand eight hundred and sixty-five, by Nicholas de las Casas, against the steamer Alabama, her engines, tackle, &c., and against the steam tug-boat Game Cock, her engine, tackle, &c., (collision, $60,000,) for the reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamer and steam-tug, or vessel', their tackle, &c., may be cited in general and special to answer the premises; and all proceedings being had, that

the said steamer and steam-tug, or vessels, their tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded, as we have before commanded you, to attach the steam-tug Game Cock, or vessel, her tackle, &c., and to detain the same in your custody until further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 30th day of January instant, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then there to interpose a claim for the same, and to make their alle-
9 gations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this ninth day of January, in the year of our Lord one thousand eight hundred and sixty-six, and of our Independence the ninetieth.

[L. S.] GEO. F. BETTS, *Clerk.*

MAN & PARSONS,
Proctors for Libellant.

In obedience to the within monition, I attached the Steam-tug Game Cock, impleaded, &c., therein described, on the 16th day of January instant, and have not given due notice to all persons claiming the same that this court will, on the 30th day of January instant, (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated January 30, 1866.

R. MURRAY,
U. S. Marshal.

(Indorsed:) Vol. 19, page 356. Southern district of New York, United States district court. Nicholas de las Casas vs. the Steam-tug Game Cock, &c., impleaded with the st. Alabama. Alias monition returnable January 30, 1856. Man & Parsons, proctors for libelant. Filed January 30, 1866. I hereby depute P. Miller to execute the within process. Dated January 9, 1866. R. Murray, U. S. marshal. E. 152.

10 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York on Saturday, the 23d day of December, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the Hon. Samuel R. Betts, district judge.

NICHOLAS DE LAS CASAS
agm.
THE STEAMER ALABAMA, &C., THE COASTWISE Company, clt., impleaded with tug-boat Game Cock.

And now, Daniel L. Carrington, a part owner of the steamer Alabama,

intervening for the interest of the Coastwise Company, claimant of said steamer Alabama, in the said steamer, appears before the honorable court and makes claim to the said steamer, &c., as the same are attached by the marshal under process of this court at the instance of Nicholas de las Casas; and the said Daniel N. Carrington does aver that the said Coastwise Company, of which he is president, is in possession of the Alabama at the time of the attachment thereof, and that the company above named *are* the true and bona-fide owner of the said steamer Alabama, and that no other person is the owner thereof. Wherefore they pray to defend accordingly.

D. N. CARRINGTON,
Pres'd't and part owner.

Sworn to and subscribed this 24*d* day of December, A. D. 1865, before me.

GEO. F. BETTS,
U. S. Commissioner.

OWEN, GRAY & OWEN,
Proctors for Claimants of Alabama.

(Indorsed:) Vol. 19, No. 356. United States district court for the southern district of New York. The steamer Alabama asm. Nicholas de las Casas. Owen, Gray & Owen, proctor' for claimant. Claim of owner. Filed 23 day of December, 1865.

11 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday, the 4th day of April, in the year of our Lord one thousand eight hundred and sixty-six,

Present, the Hon. Samuel R. Betts, district judge.

STEAM-TUG GAME COCK, IMPLEADED &C., *asm.* NICHOLAS DE LAS CASAS.

And now William E. Gladwish, owner of the steam-tug Game Cock, intervening for the interest of himself and others in the said steam-tug, appears before the honorable court and makes claim to the said steam-tug, &c., as the same are attached by the marshal, under process of this court, at the instance of and the said claimant avers that he was in possession of the said steam-tug at the time of the attachment thereof, and that the person above named true and bona-fide owner of the said steam-tug, and that no other person is the owner thereof. Wherefore he prays to defend accordingly.

WILLIAM E. GLADWISH.

Sworn to and subscribed this 4th day of April, A. D. 1866, before me.

JOHN A. OSBORN,
U. S. Commissioner.

BEEBE, DEAN & DONOHUE,
Proctor' for Claimant.

(Indorsed:) Vol 19, No. 356. United States district court for the

southern district of New York. Steam-tug Game Cock asm. Nicholas of las Casas. Beebe, Dean & Donohue, proctors for claimant. Claim de owner. Filed the fourth day of April, 1866.

12 United States district court for southern district of New York.

NICHOLAS DE LAS CASAS ET ALS., LIBELANTS,
vs.
THE STEAMER ALABAMA, HER TACKLE, &C.,
the Coastwise Company claimants.

The libel in this cause having been filed, and process against the steamer having been issued, but at the request of the claimants, on the promise of stipulation for value not delivered to the marshal, and the steamer being about to proceed to sea on a voyage: Now, it is hereby stipulated by and between the proctors for the respective parties and on behalf of the respective parties that the process shall not be served upon the vessel, provided the claimants appear in this action and file their claim to the said vessel, her tackle, &c., and enter into stipulation for costs and for value, in the sum of one hundred thousand dollars, according to the course and practice of this court, and file their consent to answer the said libel within fourteen days after the return-day mentioned in the said process, or that decree may be entered by default:

Provided further, however, and it is hereby expressly understood that this stipulation shall not, nor shall the entering into the above stipulation, be in anywise considered as an admission of the value of the steamer and her freight pending, nor prevent the claimants from proving upon any trial of this cause, the real value of the said vessel and freight, under the act of Congress limiting the liability of ship-owners.

Dated New York, December 23, 1865.

MAN & PARSONS,
Libellant's Proctors.
OWEN, GRAY & OWEN,
Claimants' Proctors.

13 We approve of Marshall O. Roberts and Henry Steers as sureties to join in the above-mentioned stipulation.

Dated New York, December 23, 1865.

MAN & PARSONS,
Libelant's Proctors.

(Indorsed:) 19, 36. U. S. district court, southern district of New York. Nicholas de las Casas et al. libellants, vs. The Steamer Alabama, her tackle, &c., the Coastwise Company claimants. Stipulation for bonding. Ent'd app'n cl'ma'ts & stipulation for value represent steamer. Filed December 23d, 1865.

United States district court.

NICHOLAS DE LAS CASAS
agst.
THE TUG-BOAT GAME COCK, IMPLEADED, &C,

On the stipulation for costs and value filed herein on behalf of the claimant for the tug-boat Game Cock, and on payment by the said claimant of the marshal's fees for the arrest and detention of the said

vessel, we hereby consent that an order be entered according to the rules and practice of the court, discharging her from custody.

Dated April 10, 1866.

MAN & PARSONS,
Libelant's Proctors.

(Indorsed:) United States district court. 19, 356. Nicholas de las Casas against the Game Cock impleaded, &c., with Alabama. Stipulation on bonding. Filed April 10, 1866.

14 District court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 23d day of December, 1865.

Whereas a libel was filed in this court on the 21st day of December in the year of our Lord one thousand eight hundred and sixty-five, by Nicholas de las Casas against the steamer Alabama, her engines, &c., (impleaded with the steam-tug Game Cock,) for the reasons and causes in the said libel mentioned, and praying that said steamer be condemned and sold to pay the demands of the libelant, and the parties hereto hereby consenting, and that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands.

And whereas, also, a claim has been filed in said cause by the Coastwise Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

COASTWISE COMPANY.
By D. N. CARRINGTON, *Pres't.*
M. O. ROBERTS.
HENRY STEERS.

Taken and acknowledged this 23d day of Dec., 1865, before me.

GEO. F. BETTS,
U. S. Commissioner.

15 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Marshall O. Roberts and Henry Steers, parties to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

M. O. ROBERTS.
HENRY STEERS.

Sworn to this 23d day of December, 1865, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the 23d day of December, 1865.

Clerk.

District court of the United States for the southern district of New York. In admiralty.

Stipulation for value entered into pursuant to the rules and practice of this court.—Filed the 23d day of December, 1865.

Whereas a libel was filed on the twenty-first day of December, in the year of our Lord one thousand eight hundred and sixty-five, by Nicholas de las Casas against the steamer Alabama, her engines, &c., (impleaded with the tug Game Cock,) for the reasons and causes in the said libel mentioned; and, whereas, service of process has been waived, the
16 claimants consenting to appear and give bond in the sum of one hundred thousand dollars, said bond to stand in place of said steamer Alabama in lieu of said steamer being taken into the custody of the marshal, under the process issued in pursuance of the prayer of said libel, said bond to be signed by Marshall O. Roberts and Henry Steers, as sureties, as appears from said consent now on file in said court, and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants or their sureties, execution for the above amount may issue against their goods, chattels and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall at any time upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Owen, Gray & Owen, esquires, proctors for the claimants of said steamer Alabama, abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

COASTWISE COMPANY,
By D. N. CARRINGTON, *Pres't.*
M. O. ROBERTS,
HENRY STEERS.

Taken and acknowledged this 23d day of December, 1865, before me.
GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Marshall O. Roberts and Henry Steers, parties to the above stipulation, being duly sworn, each deposes and says that he resides in
17 the city of New York; that he is worth the sum of two hundred thousand dollars over and above all his just debts and liabilities.
M. O. ROBERTS.
HENRY STEERS.

Sworn to this 23d day of December, 1865, before me.
GEO. F. BETTS,
U. S. Commissioner.

Recorded this 23d day of December, 1865.
Approved 187 .

District court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 4th day of April, 1866.

Whereas a libel was filed in this court on the 21st day of December, in the year of our Lord one thousand eight hundred and sixty-five, by Nicholas de Las Casas vs. the steamer Alabama, her tackle, &c., and the steam tug-boat Game Cock, her engine, &c., for the reasons and causes in the said libel mentioned, and praying that said vessels may be condemned and sold to pay the demands of said libelant and the parties hereto hereby consenting, and that in case of default or contumacy on the part of the claimant or his surety execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands;

18 And whereas also a claim has been filed in said cause by William E. Gladwish:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal by the appellant court.

WILLIAM A. GLADWISH.
THOMAS REID.

Taken and acknowledged this 4th day of April, 1866, before me.
JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Reid, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city and southern district of New York; that he is worth the sum of five hundred dollars over and above his just debts and liabilities.

THOMAS REID.

Sworn to this 4th day of April, 1866, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 4th day of April, 1866.

Clerk.

19 District court of the United States for the southern district of New York. In admiralty.

Stipulution for value, entered into pursuant to the rules and practice of this court.—Filed the 4th day of April, 1866.

Whereas a libel was filed on the twenty-first day of December, in the year of our Lord one thousand eight hundred and sixty-five, by Nicholas de las Casas against the steamer Alabama, &c., and the steam tug-boat Game Cock, her engine, tackle, &c., for the reasons and causes in

the said libel mentioned; and whereas the said steamboat Game Cock, her tackle, &c., is in the custody of the marshal, under the process issued in pursuance of the prayer of said libel; and whereas it has been agreed that said steam tug-boat Game Cock, &c., be discharged from custody on the claimants thereof executing stipulations for costs and value; the latter in the sum of ten thousand dollars, the latter being admitted to be her value, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or his surety, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Beebe, Dean & Donohue, esqrs., proctors for the claimant of said steam tug-boat Game Cock, &c., abide by and pay the money awarded by the final decree rendered by the court, or the appel-
20 late court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

WILLIAM E. GLADWISH.
THOMAS REID.

Taken and acknowledged this 4th day of April, 1866, before me.

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Thomas Reid, party to the above stipulation, being duly sworn, deposes and says that he resides in the city and southern district of New York, and that he is worth the sum of twenty thousand dollars over and above his just debts and liabilities.

THOMAS REID.

Sworn to this 4th day of April, 1866, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded this 4th day of April, 1866.
Approved April 10th, 1866.

MAN & PARSONS,
Libellant's Proctors.

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The separate claim and answer of "The Coastwise Company," owners of the steamer Alabama, her engines, tackle, &c., to the libel and complaint of Nicholas de las Casas against the said steamer Alabama, her engines, tackle, apparel, and furniture, and also against the steam-tug Game Cock, her engine, machinery, boats, tackle, apparel, and
21 furniture, and against all persons lawfully intervening for their interest in the said vessels in a cause of collision, civil and maritime, shows:

First. That the claimants are the sole owners of the said steamer Alabama, her engines, machinery, boats, tackle, apparel, and furniture, and they pray that the same may be delivered up and restored to them by the order and decree of this court, notwithstanding anything in the

libel alleged to the contrary thereof. And for a separate answer and defence to the said libel, these claimants allege:

Second. That on Friday the fifteenth day of December, 1865, at about five o'clock p. m., the steamer Alabama left her dock in New York and started on a voyage from thence to New Orleans with freight and passengers.

That before so sailing on said voyage a Sandy Hook pilot, duly licensed to act as pilot by the commissioners of pilots, and in conformity with the statutes of the State of New York, then in full force and effect, offered his services to pilot the said steamer to sea by the way of Sandy Hook, and thereupon the master of the said steamer accepted his services, as by the acts of the legislature of the State of New York he was obliged to do; that the said pilot thereupon entered upon and took the entire management and control of the all the movements of said steamer from the time she so started until and at the time of the collision in the libel mentioned; that every movement of the said steamer during the said time was made entirely by and under his direction, and not by or under the direction of the master, officers, or crew of the said steamer, except in so far as they were in compliance with and carrying out his orders. And the claimants are advised and therefore insist that, if the collision alleged in the said libel was caused in anywise by the movements or maneuvers of the said steamer, or by the failure on her part to make right and proper move-
22 ments and maneuvers in reference to the steam-tug Game Cock and the barque in tow, or in reference to either of them, neither the said steamer or these claimants is or are in such case responsible or in any manner liable therefor; and they therefore pray that the libel herein may be dismissed as to the said steamer Alabama, with costs.

Third. And for a further answer to the said libel, but without in any manner waiving their aforesaid plea, these claimants allege that at the time of departing from the wharf, and up to the time of the said collision, the said steamer was in every respect well, sufficiently, and fully manned and equipped for the voyage she had undertaken; that before and at the time of the said collision her lights were set and burning, and she was going at a slow rate of speed, and had a competent lookout properly stationed and faithfully attending to his duty, and her officers and men were at their regular and proper stations on deck to transmit and execute orders with promptness, and every possible precaution had been and was used to avoid collisions and other accidents.

Fourth. That while the said steamer Alabama was so proceeding to sea, and shortly after six o'clock p. m., when near Fort Richmond, in the Narrows, the aforesaid tug-boat was discovered, a considerable distance off, bearing on the steamer's port bow; that as the vessels approached each other the tug-boat changed her course suddenly and unexpectedly, without giving any proper signal or warning of her intention to do so, and attempted to cross the steamer's bow and pass on her starboard side; that as soon as such intention was manifested every effort was made on the part of the steamer which could have been to avoid a collision, and the said steamer did in fact clear the tug-boat, but collided with the barque.

23 Fifth. That the said tug-boat was at the time towing the barque Ninfa de los Mares astern, on a line or hawser of about one hundred and twenty yards in length; that the night was dark, and the fact that she was so towing the barque on a line could not be seen or known from the steamer before the vessels came together, or so nearly together that it was impossible to avoid a collision with the barque.

That the barque had all her sails furled, and could not be distinguished

from a vessel at anchor; that she had no sufficient or proper lights set and burning; that she had no competent lookout stationed and attending to his duty, and no proper man at the helm, and no warning was given that she was moving astern of the tug-boat; that she was not properly steered or navigated; and she was in these and other respects in fault, causing the collision.

Sixth. That the claimants have no knowledge of the matters set forth in the second article of the libel, and therefore deny the same, except that the vessel was in tow of the tug-boat, in or near the Narrows, at the time of the collision.

Seventh. The claimants deny the matters contained in the third article of the libel, except in so far as the same correspond with the facts and circumstances hereinbefore set forth.

Eighth. The claimants also deny the allegations of the fourth article. On the contrary, they aver that the barque was responsible, under any circumstances, for the conduct of the tug-boat, and that the said tug-boat and the said barque were respectively improperly and unlawfully navigated, and that the collision occurred through the fault and improper navigation of the barque individually or in common with the fault of the said tug-boat, and not by the fault or negligence of the steamer; that everything was done on the part of the steamer
24 which was possible to avoid the said tug-boat and her tow; and they deny each and every allegation of the libel in anywise to the contrary.

Ninth. The claimants have no knowledge of the matters set forth in the fifth article, but they deny that the damages sustained were sixty thousand nine hundred dollars; but whatever the same may be, they insist that if the steamer shall be adjudged in fault and liable for the damages, still neither she nor her owner is or can be liable for more than the amount or value of herself, and of her freight pending at the time of collision, as provided by the act of Congress limiting the liability of ship-owners in like cases.

All of which matters the claimants are ready to maintain and prove. Wherefore they pray that a decree may be made and entered herein dismissing the libel as against them with costs.

OWEN, GRAY & OWEN,
Clt's Proct's.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Daniel N. Carrington, being duly sworn, says that he is the president of the Coastwise Company, the claimants in the foregoing answer named; that the said answer is true of deponent's own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

D. N. CARRINGTON,
President.

Sworn to before me January 29, 1866.
[L. S.]
HENRY PALMER,
Notary Public for City, County, and State of New York.

(Indorsed:) U. S. district court. 19, 356. The Steamer Alabama, her engines, &c., the Coastwise Company, claimants, ads. Nicholas de las Casas. Answer. Owen, Gray & Owen, clt's proct'rs. Filed January 29, 1866—11.

25 To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The answer of William E. Gladwish, claimant of the steam-tug Game Cock, to the libel of Nicholas de las Casas, owner of the bark Ninfa de los Mares, against the steamers Alabama and Game Cock, respectfully shows:

First. That this claimant is the true and only owner of the said steamboat Game Cock, and has duly intervened and claimed the same.

Second. This claimant having no knowledge and no information, except from the libel, as to who owns the said bark, he therefore leaves the libellant to make such proof thereof as he may be advised.

Third. This claimant admits that at the time stated in the libel the libellant's vessel was being towed from sea to New York, as stated in the libel, but where she was from claimant is ignorant, and also as to what crew she had, and leaves libellant to make such proof thereof as he may be advised. That said towing was to be and was being performed in the usual and customary manner.

Fourth. That the claimant admits the statements of the third article of the libel.

Fifth. This claimant, further answering, says, that he denies all the negligence on his part, as charged in the fourth article of the libel, and he denies each and every statement of negligence charged against the said steamboat Game Cock, and alleges that all the acts and doings on the part of the claimant and said steamboat Game Cock in the premises were skillful and proper, and that if any collision occurred it was
26 not through the fault of those on board said steamboat Game Cock; that when the said steamer Alabama was first observed from the Game Cock, she bore on her starboard bow, sailing in an opposite direction, and she should have stopped or passed the Game Cock and her tow at a safe distance to the eastward, as she was well able to do, in which case such a collision would not have taken place.

Sixth. That this claimant, having no knowledge or information except from the libel as to the statements in the fifth article of the libel, denies the same.

Seventh. The claimant admits the statements in the sixth article of the libel.

Eighth. That all and singular the statements herein are true, and in all matters wherein the libel is not admitted the claimant denies the same.

Wherefore this claimant prays that this honorable court would be pleased to order and decree that the libel herein be dismissed with costs, or for such other or further relief to this claimant in the premises as may be just, &c.

WM. E. GLADWISH.

Sworn to before me this 14th day of January, 1867.

JNO. T. McGOWAN,
Notary Public.

(Endorsed:) 19, 356. U. S. district court. Nicholas de las Casas v. The Steamers Alabama and Game Cock. Answer of claimant of steamboat Game Cock. Beebe, Dean & Donohue, proctors for clmt. Filed January 15, 1867.

27 *Judge Blatchford's minutes on hearing.*

U. S. district court. October 9, 1867.

NICHOLAS DE LAS CASAS
vs.
THE ALABAMA AND THE GAME COCK.

Mr. Parsons for libellant; Mr. Owen for Alabama; Mr. Donohue for Game Cock.

Mr. Parsons opens.

Libellant's vessel, barque Ninfa, in tow of Game Cock, December 15, 1850, attached by hawser to Game Cock, near fort, at lower end of Narrows on Staten Island side, six p. m. Alabama going to sea; Ninfa coming in; hawser fifty or sixty fathoms long; Ninfa struck on starboard bow near fore-chains, and sunk. Alabama claims no lights on Ninfa.

Deposition of Bartolomé Matthew, first officer of Ninfa.
" Luziano Diez, major-domo.
" Midwell Martin, seaman.
" Francisco Rodriguez, seaman.
" José Vidal, at wheel.
" Blaz St. Anna, sailor.
" Ignacio Garcia Caspro, seamen.
" José Antonio Cabrera, cook.
" José Perez, (diagram,) seamen.
" Mariano Sanchez, (diagram,) seamen.

28 Deposition of Juan Antonio Hernandez, seamen.
" Emanuel Suarez, seamen.
" Gabriel Lorenzo, seamen.
" José Maria Cabrera, seaman.
" Geronimo Perez, seaman.
" Miguel de las Casas, master.
(Diagram.)

GEORGE S. WATSON: Pilot six years. On Ninfa at collision; took her off Barnegat day before collision; was on her when she took the tug, 15 miles S. E. of Sandy Hook, six or eight miles off shore; took tug about eleven or twelve o'clock day of collision; made fast with hawser off port bow of barque to stern of tug; I directed how; passed through chock on Ninfa's port bow, usual way, fifty or sixty fathoms of hawser; sixty is suitable length; collision about six p. m. I was top of house, aft, at time—top of cabin; weather clear; wind northward and westward; wind on port bow; sails furled; lights burning brightly at time—that is, starboard light was; both were to best of my knowledge; when G. C. blowed whistle both of them burning; did not take notice of N.'s lights after collision; lights were abaft mizzen rigging; made fast to rack on each quarter-frame; when I first saw A. she was above Narrows and we one-half way to west bank. I saw a red light, say three miles off—can't tell bearing—on starboard bow; she was above Narrows, near Robins' Reef light; nothing occurred till G. C. blew whistle twice; A. did not answer, so I heard; two whistles means starboard the wheel; one whistle is port wheel; two whistles is go to the left; the first one that blows gets the right of way; when G. C. blew the A. was about a point on starboard bow of N.; when G. C. blew we put our wheel starboard. I took the two whistles to mean we must starboard our wheel. The A. was not backing when she struck the N.; she hit the

N. on starboard bow, forward of fore-rigging, and sunk the N. in
29 a few minutes. The crew and I got aboard the A.; the N. had a large crew, all good seamen, apparently; understood my motions. I helped put wheel starboard; it was just below Fort Richmond, below bluff on S. I., about 150 or 200 yards from shore, not over 200 where N. sunk; channel is mile wide. If A. had gone across our bow with his helm a-port, he would have got ashore; those ships don't answer their wheels very quick; I mean the A.; she could have gone in shore parallel to us. We always tow small vessels along west shore with wind from west; the water is smoother, it is easier towing; to east of us across Narrows is seventeen or eighteen fathoms deep; not less than ten deep for whole mile of width. N. only changed one or two points from time we starboarded wheel till collision. We could have done nothing aboard barque to prevent collision.

Examined by A.:

When I first saw A. the N. was one-half way to West Bank. The W. B. is a mile to southward of place of collision. We were not going fast; G. C. not powerful; flood-tide; saw red light 1 point on starboard bow; when I saw it we were heading N., maybe a little E. or W. I ordered him to follow G. C. light till I told him to alter it. I saw the red light all the time till collision; it was more on starboard bow at time of collision. The tug blew before she reached the bows of A.; she was on the A.'s starboard bow when she blew; the N. was not then off starboard bow of A. I saw red-light before G. C. blew; knew it was vessel's light. When G. C. blew I ordered wheel hard starboard. I helped put it over. I put it over hard starboard as soon as I heard the whistle; got it over as quick as possible. I gave no hail; heard none from G. C. or our vessel. The two whistles indicated the G. C. was to pass to left, and that A. must give way and pass to left also. I did not think A. and G. C. were approaching each other nearly head and head before whistle blown. There was no reason for G. C. hugging west shore except practice and her convenience; plenty of water eastward; all channel. I could
30 see green light of N. by looking over from top of house. When I heard whistle blow I went to look and see if green light was burning. I looked at light as I jumped off house to starboard helm. I saw no light on G. C. except bright light aft on pole—flag-pole.

Examined by G. C.:

The G. C. did not change course from time I first saw red light till she blew whistle; as far as I saw, was heading along land. When I first saw red light it was one-half point on starboard bow; it was then up near Robin's Reef light, and I was one-half way from fort to West Bank; up to time whistle blown bearing of red light not varied; heard two whistles blown; heard no reply; not much wind; wind was N. W. across us; northward and westward.

Libellant rests.

Defence for Alabama:

Deposition of John Pullin, quartermaster on Alabama.
" Otis Pendleton, 1st officer of "
" George W. White, engineer "
" Peter Madsen, quartermaster " at wheel.

Adjourned to October 8, 1867.

OCTOBER 8, 1867.

Deposition of George F. Smith, 2d assistant engineer.
" James E. Shafer, chief engineer.

DEFENCE FOR GAME COCK.

WILLIAM H. MILLS: Engineer; on G. C. at time as engineer; was in engine-room; first heard two whistles from G. C.; had bark in tow, she behind; looked out on starboard and saw something coming down; the vessel that afterwards came in. After the whistles we sheered in shore, to the left. When I looked out A. was half a mile ahead towards N. Y. and about two points on starboard bow; heard no reply to
31 whistles; when A. passed, wheels in motion; she was rounding in under our stern with her wheel ported; saw lights on A.; can't say what.

Examined by A.:

Was in engine-room when heard whistle; no one in there but I; went two steps to look out; this was on starboard side of tug; the tug was heading for S. I. shore, towards shore; would have run ashore if had continued same direction; had not looked out before; don't know how long she had been on that course. When A. passed us she was sheering around under our stern, heading around to shore. She went 50 yards under our stern.

JOHN RILEY: Deck-hand on G. C. at time; had bark in tow; bark had two colored lights up; saw A. half a mile ahead; was on after-deck; whistles called my attention; whistles from G. C. I then looked and saw something coming; she was on our starboard bow. I saw no light at all on A. I heard no signal from A. I saw A. pass us; she was going eight knots; wheels in motion, ahead. She was about fifty yards from our stern as she passed. As she went by she came around our stern. There are printed regulations in pilot-house as to whistles.

Examined by A.:

Was on after deck; alone; was sent there to look after the hawser; it was sixty-five fathoms long; fastened to bitts at stern, in centre. When heard whistles we were heading right in shore; would have brought up if continued on; sixty-five fathoms from landing at fort. Then the A. was on starboard side, ahead. We were then on her starboard side. The A. was approaching us head on. Our boat had been on that course from S. W. Spit. I did not see the A.'s lights. I saw the lights of the bark. G. C. was hard starboard from time saw steamer. G. C. put hard starboard before she whistled, half a minute before, and was kept hard starboard up to collision; line parted at collision; then we went alongside of A.

Examined by libellant:

Wheel of G. C. forward. I was seventy-five feet from
32 wheel. I went to wheel-house to tell captain when I saw A. coming along; was aft at two whistles; captain was at wheel; Ninfa was in ballast.

EVIDENCE FOR ALABAMA.

JOHN MARTINO: Pilot of A. at time; pilot 28 years; was on port side of pilot-house at starting from N. Y.; was in and out and in front of pilot-house; window down; very dark night; partly cloudy; could see ship's light about three miles; flood-tide; favorable to tug; we *were* heading S. ½ W. when first saw tug; were then little above Clifton, about quarter mile from shore; tug's light was two miles or more off when

first saw it; it bore S. ½ E., half point a little more on port bow; saw the green, red, and white light above; on seeing that light ordered him to look out for his port wheel, to pass to right; then saw tug trying to cross our bow; discovered that by lights on S. H. and Highland. She was eastward of those lights, and they were half point to eastward of A.'s course, and I saw the tug draw across the lights to go to westward of us. I then ordered the man to look out for starboard helm, to keep helm starboard. He kept it starboard till I discovered tug would go clear of us, and then I told him to steady. Those orders were obeyed. Next came two whistles from tug, then not more than sixty feet from us; then I saw green and white lights of tug; when blew whistles was crossing our line; could see smoke-stack over our bow; heard two blasts; then told quartermaster to starboard his helm; order obeyed; by time of collision helm hard-a-starboard; when whistles blown no bells then rung; then hail from tug, we would be onto that vessel; then slowed, stopped, and backed; struck a minute after hail; saw no lights on bark; saw tug's three lights, and then she hid her red light when she crossed our bow; did not know till she hailed that she had a vessel in tow. We struck about her cat-heads. When I heard whistles G. C. was heading on land. We were then parallel with land; had not then
33 changed our course to W. of S. at that time. We did not swing around on port-helm towards shore; we did not change by porting more than quarter of point; we kept to right; that is usual course going to sea. We were making for Sandy Hook lights, which were quarter to half point on our port bow.

The master's diagram does not show positions correctly. It places the G., C., and the N. too far to westward of A., and A. too far to eastward. The A. was further to west. We went to within less than 200 yards of Fort Tompkins water-battery. The dotted line in master's diagram does not represent A.'s course correctly. We did not swing round on a port helm. If we swung any it was on a starboard helm; when whistles blew, were heading due S.; changed not more than ¼ of a point by starboarding, from whistles to collision. The master's diagram does not lay down course of G., C., and N. correctly with reference to shore. They were heading towards shore. The wreck is there yet. It is half way between fort and bluff light—200 yards from shore. I saw nothing to hinder G. C. from going to eastward of us.

Examined by G. C.:

Took S. course, half mile to N. of Fort Tompkins light; at Robin's Reef took S. ½ W.; had been on that 15 minutes when saw G. C.'s lights; kept that course till changed to S.; first saw G. C.'s lights 3 miles off; changed to S. on account of land; when first saw G. C.'s light it was half point on port bow; after we changed to S. saw her drawing to W. Then I starboarded when I discovered she was drawing to W. I starboarded to let her go to W. I gave no signal. There are *in* some regulations printed, in pilot-house; don't know whether A. had them; saw her three lights but a short time after she began to draw to W. After I thought I had got her enough to W., I straightened on course. This was before whistles blew. I straightened up when I thought G. C. had room to go to our starboard. The whistles came right after I straightened.

34 Examined by libellant:

Changed from S. ½ W. to S., due south; kept on S. ½ W. 15 minutes; kept on S. 10 minutes; was then going parallel with shore no change then till G. C. blew whistles, and we starboarded our helm answered her whistle by starboarding to go outside. After clearing tu

she blew, and we then starboarded. Five minutes after I told him to mind his port helm, I told him to starboard. The tug was not more than 60 feet from our bow when she passed us. The G. C. was just passing our starboard bow when I heard whistle. She was then just abreast of our stem. When she blew I starboarded. Her stem was 30 feet from our stem when she passed. She was then heading N. N. W. It was not more than three to five minutes before G. C. blew that I meant to let G. C. pass to westward. I expected tug to pass us 50 to 100 feet off. I had charge of A. When I made up my mind to let G. C. go to W. of us, I could not make it 100 yards as well as 100 feet; have been pilot ever since collision.

Examined by A.:

After I steadied on S. course, the G. C. could not pass unless I had starboarded. When G. C. whistled she was safe. After whistling she hailed. The A. had white light at mast-head, green on starboard, and red on port. They were burning, in good order.

Examined by libellant:

Saw only three vessels going down; going slow; drew sixteen feet; one hour and twenty minutes from Warren street to bluff. After leaving Clifton our rate was six knots. She was very deep; wheels deep; heavy loaded.

Adjourned to October 9, 1867.

OCTOBER 9, 1867.

EVIDENCE FOR G. C.

WILLIAM A. HERMANCE: Captain of a tug-boat; was captain
35 of G. C., towing N., before making A.; was coming up along W. shore of S. I., within two or three hundred yards; would not like to go nearer than I was with N.. When I made the A., the A. was on my starboard bow. When I first saw her she was near Robbins' Reef. I blowed two long, sharp whistles. Up to time I blew whistles she had not been on my port side. Up to time I blew whistle no change in my course. When I saw A. heading at me, I blew whistle to make her starboard; then I varied slightly to shore. When A. passed me, wheels in motion ahead. When she passed my bow, my speed was about three knots; wind to westward. I came up along west shore to windward; that is usual course up; course to report at quarantine. I was west of Man-of-War Shoals. Heavy vessels generally go out east of those shoals. Deck of my vessel, abaft, 3 ft. above water; on deck-house, inside of rail, 3 ft. space around it; house 8 ft. wide, or 7½, and about 8 ft. high. My colored lights were top of pilot-house, one on each side; screens on corners of that house; white light on flag-pole aft. The collision shoved the bark's head in-shore. I was in pilot-house, on my boat. I saw white light at mast-head or bowsprit; also saw her green light. The bark's green light was highest up from the water—higher than my green light. The Alabama's deck was some feet higher than my pilot-house. The A.'s pilot-house is higher than her main deck.

Examined by A.:

Went into my pilot-house that night before dark; took my meal before dark; took it before I saw A.'s light. While I took my meal Haskell had my wheel. He is dead. He was with me in the pilot-house. We had been there together from the time I got my supper till I saw A.'s light.

I was on starboard side of wheel. They were open, down, I am sure. There were seven men on my boat—two deck-hands, one cook, two firemen, one engineer, and one captain, and deck-hand was a wheelsman.

When I first saw the A. she was up by Robbins' Reef. I was
36 then just below the Narrows, on my way up. We were a large mile or more apart then. The A. then bore on my starboard bow; did not then see any light but her masthead-light; next observed her one-quarter mile away, on my starboard bow; then saw her masthead-light and green and red light approaching me. I was then heading between N. and N. by W. When I saw her one-quarter mile off, I blew my whistle for her to keep her wheel starboard. I then starboarded my wheel a little, all I dared. The G. C. was then about two hundred yards from shore. The N. drew light; 11 feet in ballast. I heard no hail from the bark after I blew. I gave no order as to steering the N.; I left that to the pilot on the N. I was in my pilot-house all the time from time I saw the A. at Robbins' Reef till collision. I have no interest in G. C.; don't recollect tide.

Redirect:

I am not now employed by owners of G. C.

Examined by A.:

Wind was W., two or three knot breeze; N.'s sails furled.
G. C. rests.

37 U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

BARTHOLEME MATHEW, being duly sworn and examined as a witness for the libellant in this cause, through William B. Goff, duly sworn as interpreter, testifies: I am a Spaniard, and am unable to speak English. My home is at La Palma, in the Canary Islands. I am going to return there as soon as I can. I was mate of the bark Ninfa de los Mares when the Alabama ran into her on December 15, 1865. I had been her mate since September 3, 1865. I am thirty-six years of age; have followed the sea twenty years; was master of a vessel for four or five years, up to a year ago, and, for fourteen years before that, was mate. In the Spanish marine, instead of sailors being advanced to be mates and captains, young persons are educated for those positions, and become mates after a year's sea service; this was the way with me. I studied navigation and seamanship for two years in the Nautical College of Palma de Mallorca, in the Balearic Islands. The Ninfa was bound on a voyage from Havana to New York; she left Havana on December 3, 1865; she had a full crew, consisting of nineteen, all told—captain, one mate, contra-maestre, major-domo, cook, a cabin-boy, and thirteen seamen. On December 13, 1865, we took the pilot off
38 Barnegat, and on December 15, 1865, in the forenoon, we took the tow—the Game Cock, I think—about 11 o'clock. The Game Cock came close to our vessel, and the captain engaged her to tow our boat up to the Battery—to New York. I had been into New York once before—two years ago. The bargain was made by hallooing from vessel to vessel—the pilot making the arrangement on one side, on signals

of our captain, who showed doubloons, from which the pilot counted out the number we were to pay; the Game Cock then took our vessel in tow; a hawser (of the Ninfa) was taken from her to the Game Cock; the Game Cock's crew threw a line on to our vessel, to which we attached our hawser, and the Game Cock then hauled out the line, and signalled to us when to stop and make fast, which we did; the pilot directed the matter on our side; the hawser came over the boat's port bow, and was then passed around the capstan, and made fast to the Ganamusa. All our sails were furled, and remained so to the collision. The wind was northwest; there was a pretty good wind ahead for us. The Alabama struck us about six o'clock of the same afternoon. We were near the fort on the Staten Island side of the channel. The weather was clear and starlight. The sailing instructions on our vessel were to follow the Game Cock, which we did. José Vidal was at our wheel when the Alabama hit us; he had been there perhaps an hour; the men were relieved very frequently on account of the cold. When I first saw the Alabama she was some distance off; it was just at the time the Game Cock blowed her whistle; she blowed twice; the Alabama was then coming down towards us; I saw her over our starboard bow; did not notice her lights till I went aboard of her; our vessel continued to follow the tug; she had no motion of her own. I stood on the starboard side of the main deck, between the foremast and mainmast, and walked back and forth there; our vessel kept on, and the Alabama kept right on down on the top of us. I noticed no change in the course of our vessel previous to the collision; could not see the helm; the Ala-
39 bama hit the Ninfa on the starboard bow; she kept right on full speed into her; she did not stop, nor, as I saw, diminish her speed.

The Alabama cut into the bark so that she commenced to sink immediately, and she did sink in seven, eight, or ten minutes, her crew escaping on to the Alabama by the forerigging; the Alabama's anchor caught into our fore-rigging, and we all climbed over in that way, saving nothing save what was on us. There was plenty of room for the Alabama to keep clear of the bark—any quantity of room on our starboard side; we were close in to the Staten Island side. The bark had her lights set, a green light on her starboard, and a red one on the port side, a little abaft the mizzen rigging—about eight feet above the deck. They were burning brightly. The lights consisted of regular ship-lights, made for the purpose, set in a side box, so that you can't see them from behind. They were lit at sunset, and were both burning at the time of the collision; the green light I saw from the Alabama after I got on her deck; could not then see the red one because it was on the other side. All the crew of the Ninfa were on deck, scattered about; all were on the watch, mostly by the bow. We all saw the Alabama the moment the Game Cock whistled. The pilot was on the poop with the captain, and saw her at the same time. Before she ran into us, we all shouted, but the Alabama kept on; the Ninfa could do nothing more than she did to prevent the collision. The Ninfa was in ballast; I had on board thirty Spanish doubloons, worth about twenty-four dollars apiece; one thousand cigars, worth about fifty dollars; a package of silk dresses, worth seventy-two dollars; a piece of linen, worth twenty-five dollars; a set of nautical instruments, worth, with chronometer, pocket-watch, maps, &c., about seven hundred and seventy dollars. These are prices in the currency of the United States. I had also certain other articles. I have made out a list of the whole, with the value in gold stated, which is annexed hereto.

Cross-examined on behalf of the Alabama:

I have been here once before. The hawser by which the bark
40 was towed was from fifty to sixty fathoms in length. I think the Game Cock took the bark in tow about eleven or twelve o'clock in the forenoon of the day of the collision. The collision occurred about six o'clock p. m., below the new fort. The bark had a pilot on board of her at the time of the collision, but I don't know his name. All the officers and crew of the bark were on deck at the time. I was walking back and forward on the starboard side, between the mainmast and foremast; the sailors were all around there. The pilot was on the poop and the master was there also; there was nobody else on the poop; the captain and pilot were forward of the wheel. There was no one from the Game Cock on board of the bark. There was a man stationed on the bark as a lookout; I don't know his name; he was on the bow; I don't know of any in particular who were with him, but the crew were all around there. I don't know who first discovered the Alabama's light. When the Game Cock blew her whistle we all looked up, and *and* then saw the Alabama. I was in the forward part of the vessel, and cannot tell how the bark was heading before the Game Cock blew her whistle. I don't know how the tide was at the time. After the whistle, when I looked up, I saw the Alabama coming directly down towards the bark; she was on our starboard bow, somewhere from one to two points, as near as I can tell. I don't know that any orders were given at or about that time from the Game Cock to the bark, nor did I ever see the pilot of the Game Cock give any instructions while she had the bark in tow. The lights on the bark were set that night by the major-domo, who acts as steward. I saw him set them at sunset. One of the lights was green and one red. They were placed on the rail abaft the mizzen rigging, where they are always put. They were fastened there by hooks. They had a cover on them, so they cannot be seen from behind. They can be seen from the side and ahead.

The bark is 470 odd tons burthen, Spanish measurement. I don't know her length or breadth of beam.

41 The moment we took the Game Cock the sails were all furled, and the pilot gave the directions to follow the tug. There was no sea on at the time of the collision. I heard the whistles; there were two blasts, one immediately after the other. I did not know what those whistles indicated. It was eight or ten minutes after the whistles before the collision. I can't say how fast the barque was going; she was not going very fast, as there was a head wind. The Alabama was going very fast, but I cannot say how fast. I never saw the lights of the Alabama until I got on her deck, and then I only saw her cabin-lights. I did not pay any attention to her lights.

The Alabama, when I first saw her, was two or three times the distance between the barque and the tug, off from the barque.

I don't know that there was any movement of the wheel of the barque after I heard the whistles. We all shouted on the barque some time before the Alabama struck. We shouted after the blasts of the whistle on the Game Cock, but a long time before the collision.

The stem of the steamer struck the starboard bow of the barque, about midway between her stem and the fore-rigging—nearer the fore-rigging—angling from one and a half to two points from the bow. I don't think the Game Cock stopped after she blowed her whistle before the collision.

I had nothing on board the barque as an adventure; I was bringing the gold to buy some things. The articles consisted mostly of nautical

instruments and clothing. The value placed upon the articles was what I had paid for them. The value is in Spanish dollars—coin.

BARTOLOME MATHEW.
W. B. GOFF.

Subscribed and sworn to before me, this 20th day of January, 1866, by the said Bartolome Matthew, and by the said Wm. B. Goff, duly sworn as interpreter.

[L. S.]

EDWARD J. OWEN,
Notary Public, N. Y. County.

42 Cross-examined on behalf of the Game Cock:

Witness does not speak English. I do not understand English. The man at the wheel of our vessel could not speak English. The man at the wheel acted under the direction of the pilot in lay up—he obeyed the pilot's orders. The pilot could not speak Spanish—he made signs what he wanted done. There was no one on board our vessel that could speak English but the pilot. The first I heard or saw of the Alabama was the whistle of the Game Cock. I could see lights of a ship on that night, at that time, 3 to 5 miles. There was no difficulty that night in seeing colored lights from 3 to 5 miles; it was a clear night and no fog. Saw no lights on the Alabama until I got on board of her; saw no colored lights on the Alabama after I got on board of her. The Alabama, when I first saw her, was about four cables' length towards Neversink, from us a considerable distance. A cable length is 100 to 120 fathoms, that is, six hundred to seven hundred and twenty feet. The Alabama, when I first saw her, was about two points off—off our bow on the starboard side. If she had kept on, on that side, after that, she would have gone at about a distance of her own length on the starboard—that is, about one hundred and eighty feet. Our vessel had green and red lights upon our vessel—no others. The pilot had charge on board of our vessel. I heard nothing or saw of the Alabama until the whistle. I kept looking at her until she hit us, after the whistle blew.

The above is considered as taken and inserted after the witness' signature.

BEEBE, DEAN & DONOHUE.

43 *Lista que presenta el Piloto de la Ninfa del los Mares, de los efectos que tiene en dicho Brique.*

Dinero en efectivo de cuño Español 30 onzas de oro	$510
Un cronometro	200
Un sestante de metal	50
Un barometro de Briddon	20
Un velos de paldiquera con su cadeno de oro	75
Tres botones de camisa de brillantes	32
Unes gemelos de puño de canina de oro	17
Una levita de puño negro	30
2 levitas de canina	30
3 pantalones de casimir	18
Un pantalon negros de saten	6
Tres pantalones de dril blancos	18
Una piesa de ropa de nilo tela veal	17
Los cortes de vestido de señora	36
1,000 tabacos avanos brevas	35
6 ruedas cajetillas	6
8 libras de picadura	4

Planos de navegacion	150
Varios libros de navigacion y otros	50
12 camisas blancas de hilo	48
12 calsomillos de hilo	25
Varios pantalones para el uso de borde	32
Varias camisetas de color	12
Un sombrero de felpa	6
Varios sombrera	8
Un colchon de lana, 2 mantas, 2 savanas, y almodolas	20
Varias frioleras que no puedo acorda	
2 chalecos negros	8
2 chalecos de casimir de color	6
3 pares botines charol	12
Varias camisetas y chaquetones	48
1 revolver	13
Suma total en oro	$1,542

Neuva York, 20 Diciembre, 1865.

BARME. MATHEW.

44 U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

LUCIANO DIEZ, being duly sworn as a witness for the libellant, and examined in this cause through William B. Goff, duly sworn as interpreter, testifies:

I am a Spaniard, and can't speak English. I live at La Palma Island, the town of Santa Cruz. I am going there as soon as I can. I was major-domo of the Ninfa de los Mares, at the time of the collision between her and the Alabama. My duty was to attend the cabin, look after the provisions, and do whatever the captain told me. I was in the cabin at the time of the collision; did not see the Alabama before the collision, when I ran out, and then saw her. The Ninfa had her lights burning at the time of the collision. I lit them and put them up, by the command of the captain, at sunset; may have been five o'clock; may have been half past five. I saw the green light of the bark after I got on the deck of the Alabama. It was burning brightly. The lights of the Ninfa burned very bright; they had reflectors in them. I had trimmed them before they were set, and put best oil in them, and cleaned the reflectors; this was done every night. After the collision I climbed up the fore-rigging of the bark, and so caught hold of the anchor of the Alabama, and got on board of her.

Cross-examined on behalf of the Alabama:

45 I had been on board the bark for four months, and had been all the time major-domo. The oil was kept in a sort of a jar, which held about a gallon or a gallon and a half. The bark sailed from Havana, bound for New York, on the 3d December last. The side-lights were put up every night. This oil was only for the side-lights. Fluid

was burned in the cabin and forecastle. There were fifteen jars at least when we left Havana, holding from a gallon to a gallon and a half of the oil for the side-lights. I can't say, but there may have been four or five of the jars used up. The lamps were always trimmed and cleaned before they were lighted, and then if anything happened they were cleaned again. Nothing was done to these lamps on the night of the collision after they were set. I had been several times on deck after I set the lights before the collision. I was in and out all the time. It was only a few moments before the collision that I was on deck, but at the moment of collision I was in the cabin. I heard the whistles from the Game Cock. I was then in the cabin, and did not come out until after the collision. It was a very short time after I heard the whistles before I heard the shout; it may have been three or four minutes, I cannot tell, and it was perhaps five or six minutes after the shout before the collision. I don't remember what I was doing in the cabin.

Being cross-examined by the counsel for the Game Cock:

The red and green lights were all the Ninfa had set. I did not see either of the Alabama's lights.

LUCIANO DIAZ.
W. B. GOFF.

Subscribed and sworn to before me, this 20th day of January, 1866, by the said Luciano Diez, and by the said Wm. B. Goff, duly sworn as interpreter.

[L. S.] EDWARD J. OWEN,
Notary Public, New York.

46 U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

MIGUEL MARTIN, being duly sworn and examined as a witness for the libellants in this cause, through William B. Goff, duly sworn as interpreter, says:

I am Spaniard, and do not speak English. My home is at La Palma, in the Canaries. I am going home as soon as I can. I was a seaman on the Ninfa de los Mares at the time of this collision. I have followed the sea about twelve years; am about twenty-seven years old. I have sailed on the Ninfa since she was built, three or four years ago. I did not see the Alabama till the Game Cock whistled; then I saw her. She was coming down on our starboard bow, and kept on coming down till she hit us. When I first saw her she was coming down heading toward our starboard bow, and she kept on the same way till she struck us, hitting us between the bow and the fore-rigging, nearer the fore-rigging. She kept right on; did not change her course, so far as I noticed. There was plenty of room for the Alabama to pass us on our starboard side; we were right up close to the land on the left side as we came up—so near that there was not room for the Alabama to pass on that side between us and the shore. I stood during this time by the rail, on the port side first, till I heard the whistle, when I went to the star-
47 board side by the bow, and remained there till the collision. The bark was in tow of the Game Cock; our sails were all furled. We

were towed by a hawser stretched to the Game Cock, and were steering right after her. The Ninfa had no motion of her own. I had not been at the wheel while we were in tow of the Game Cock. There was, of course, nothing the Ninfa could do to avoid the collision. The Ninfa had her lights set at the time of the collision. There was a place on purpose for them on the rail, a little aft the mizzen rigging, where they were at that time—a red light on the port and green light on the starboard side. They were set at sunset, just as it began to get dark, and continued to burn bright up to the time of the collision. I saw the green light from the Alabama after I got on board of her; it still burned bright. Could not see the red one from the Alabama's from the position in which I was; it does not shine on that side. The Ninfa sunk after the collision, her crew all first escaping to the Alabama. The weather was very clear and starlight; bright night. The captain and pilot and a great many of the crew shouted to the Alabama before the collision. She made no change in her course; if she made any change, it was to head more towards the shore and the bark. So far as I noticed, there was no change in the direction of the Ninfa to the collision. I did not notice any; was not thinking of that. Could not see what was done at the helm.

Cross-examined on the part of the Alabama:

I was on the port side of the bark when I heard the whistle from the Game Cock—about the middle of the vessel, close down by the side; the men were all around there. When I heard the whistle I looked up, but I did not see the Alabama, because the kitchen on the bark prevented. I could see the Game Cock. I went right over to the starboard side after I heard the whistle, between the midship and the bow—between the mainmast and the forecastle. I then saw the Alabama, and she was coming right down on our starboard side; she was some distance
48 off, but I can't say how far. The Alabama struck the bark with her stem, between the knight-head and fore rigging of the bark. I got aboard of the steamer; I went up on her larboard bow. I was doing nothing while standing on the port side of the bark before the whistle. I did not notice any change in the direction of the tug before she blew her whistle; I was not paying attention. I can't say positively how long it was after I went over to the starboard side; it was a short time; I can't say exactly; perhaps six, eight, or nine minutes. Before I got over to the starboard side I heard shouts from the bark, and afterwards I heard no shouts from the tug. I don't know the landmarks, and can't say whether the collision occurred above or below Fort Richmond. It was a very short distance from the place of collision to the shore, on the port side of the bark; I don't know the distance. The bark began to sink right away, and sunk very soon after the collision. The hawser was not cast off from the bark, that I know. The Alabama struck the bark so as to make an angle of about 35 to 40 degrees with her bow. I did not see any other lights on vessels before the collision. When I looked up and saw the Alabama, as already stated, I did not see all her lights. I did not see any lights on the Alabama until I went on board of her. I saw her hull.

Cross-examined by the counsel for the Game Cock:

The whistle of the Game Cock called my attention to the Alabama. I was walking about on the port side and went to midships to see the Alabama. I had to get on something to see her. I went to the starboard side and climbed up. I did not see the Alabama's lights. The Ninfa had only two lights, a red and a green one, set.

49 Redirect:

I heard no whistle or bell at any time from the Alabama.

his
MIGUEL + MARTIN.
mark.
W. B. GOFF.

Subscribed and sworn before me, this 20th day of January, 1866, by the said Miguel Martin, and also by the said William B. Goff, duly sworn by me as interpreter.

EDWARD J. OWEN,
Notary Public, N. Y. County.

U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

FRANCISCO RODRIGUEZ, being duly sworn and examined as a witness for the libellant in this cause, through William B. Goff, duly sworn as interpreter, testifies:

I am a seaman, and live on the island of La Palma, in the Canaries. I am going home as soon as I can. I am a Spaniard, and can't speak English. I was on the Ninfa de los Mares at the time of her collision with the Alabama. I have followed the sea twenty years. I was on the Ninfa since she was built, three or four years. I have sailed with her captain about twelve years. At the time of the collision I was right up on the bow. I first saw the Alabama just before the Game
50 Cock whistled; she was then in front of us, to the starboard side; she was coming towards our starboard bow. She did not change her course or stop, but came straight on to us, and hit the Ninfa on the starboard bow, between the forward rigging and the knight-heads. There was lots of room on the starboard side of the Ninfa for the Alabama to pass; we were near the shore on the port side. The Ninfa was in tow of the tug-boat Game Cock; can't give the point of the compass the Ninfa was sailing, as I was not there; she was going in the same direction as the Game Cock. I noticed no change of our course up to the collision. The Ninfa could not do anything of which I know to prevent the collision. She had no motion except what she received from the tug; her sails were all furled. The Ninfa had two lights set, green on the starboard, red on the port side, on the rail aft of the mizzen rigging; they had been burning half an hour or more, and were burning brightly at the time of the collision. After I got on the Alamama I saw the starboard light of the Ninfa, which was still burning brightly. The Ninfa sunk in a very short time after the collision. I had only about time to save myself by getting on to the Alabama. The weather was clear, a starlight night; the wind was ahead. When the tug had whistled we all shouted, the captain and pilot first, some little time after the whistle. When I first saw the Alabama I remarked to the men about me, "Here comes a ship," and immediately after the tug blew her whistle.

Cross-examined, (on the part of the Alabama:)

I had been standing on the bow about half an hour before I saw the Alabama. There was no one there with me, but there were a number

of sailors near him below; they were not doing anything, looking as we were coming along. I don't know whether the Ninfa had got up abreast of the fort on the port side before I saw the Alabama. I saw two forts, but I don't know whether either was new or old. I saw one on
51 one side, and the other on the other side. I saw the fort on the left-hand side before I saw the Alabama, but I did not see the other before I went on board of the Alabama. It was a short time before I saw the Alabama that I saw the fort on the left-hand side; I can't say how long. It was a very short time after I saw the Alabama before the tug blowed her whistle. I can't tell how near the Alabama was to the tug when the tug blew her whistle; I can't judge of distance where I was. The Alabama was not in line with the tug when the whistle was blown, but was on the starboard. The Alabama had no ship-lights; the cabin-lights were visible, but she had no ship-lights. I did not remain on the bow until the collision, but I ran aft, and had got to the cabin before the collision. I did not run aft immediately after the whistle, until I saw the steamer was coming into us. I saw the master and pilot, after the whistles were blown, on the top of the cabin. I saw them there when the whistles were blown.

The lights of the Ninfa were on the rail aft the mizzen rigging—green on the starboard and red on the port side. The barque was considerably higher than the tug.

I think the hawser was about fifty fathoms in length by which the barque was towed. The hawser went first around the capstan, and then it went back to the port side where it was fastened to the "corna musa;" the "corna musa" is aft the foremast, and about half way between that and the mainmast. The crew of the Ninfa had had their supper about five o'clock.

Being cross-examined by the advocate for the Game Cock, he says:

The Ninfa had only two lights set—red and green; only saw the cabin-lights of the Alabama—bright lights, not colored. I had been on the bow about a quarter of an hour before the collision. I had had my supper. I stood on the top-gallant forecastle; that was about ten feet long. I was smoking my pipe when I went up there. I think I had finished some time before I saw the Alabama. I said nothing further in reference to
52 the Alabama than what I have stated on direct. When I saw her the pilot had charge of our vessel; no one else gave any orders; the pilot was on the poop aft. When I first saw the Alabama I could see her starboard side; when I first saw her the Alabama was as much to the starboard of the Game Cock as is shown on the diagram in the deposition of Manavo Sanchez, but she did not head so much across the course of the Game Cock; she headed more down—more on a parallel line.

Redirect:

When I got on the Alabama there was no one at her bow or near it; the crew of the Alabama were all at supper in the forecastle.

his
FRANCISCO + RODRIGUEZ.
mark.

W. B. GOFF.

Sworn to before me this 23d day of January, 1866, by the said Francisco Rodriguez, the said W. B. Goff having been duly sworn as interpreter.

[L. S.]

EDWARD J. OWEN,
Notary Public, N. Y. County.

53 United States district court for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

JOSÉ VIDAL, being duly sworn and examined as a witness for the libellant in this case, through William B. Goff, duly sworn as interpreter, testifies:

I cannot speak English; am a Spaniard. I live at La Palma, and am going home just when I can.

I have been a seaman since I was fifteen years of age; am now thirty-six. I was on the Ninfa at the time of her collision, and had been since she was built, and have sailed with her captain eleven or twelve years.

I was at the wheel at the time of the collision, and had been for about an hour. I heard the whistle of the Game Cock blown; the captain and pilot were, the pilot on the top of the poop, and the captain there, and up and down all the time; where he was just at the time I don't remember.

The Ninfa had a poop-deck about three feet higher than the main deck, which ran around the poop or house in which was the cabin, which was some four feet higher than the poop-deck, and behind the poop or house was the wheel where I stood. The rail on which the lights were placed was about four feet higher than the poop-deck.

I did not see the Alabama before I heard the whistle; then looked and saw her; she was coming towards the starboard side of the
54 Ninfa, off the starboard bow. When I first saw her she was on the starboard side of the Game Cock; can't tell how much.

The pilot looked up when the Game Cock whistled, then told me to starboard the wheel so as to make the Ninfa go to the left, and jumped down and took hold of the wheel and helped; it was put over as much as we could; it made the Ninfa change her course perhaps a point and a half to two points, to the time of the collision; the wheel was kept hard astarboard to the collision.

There was room enough for the Alabama to pass us, plenty of room on the starboard side. I think the Alabama changed her course so as to steer right for us; she did steer right for us and hit the Ninfa on her starboard bow. I had no instructions from the captain, except to follow the directions of the pilot, who told me by signs to follow directly in the wake of the tug, which I did. The Ninfa could not do anything to prevent the collision; her sails were all furled. The Ninfa had her lights set, green on the starboard, red on the port side, set on the rail aft the miz'en rigging; can't say how long they had been burning, but should think over a half hour; they were burning bright at the time of the collision. After I got on the Alabama I did not look to see the Ninfa's lights. I was one of the last to leave the Ninfa. I staid until I saw all run, the pilot and all, then I ran to save my life and got on board the Alabama. There was then no one but the crew of the Ninfa on or near the bow of the Alabama; the weather was clear and starlight. Before the collision some time the pilot began to shout, the captain and the other people; the Alabama paid no attention to the shouts that I could see.

Cross-examined on the part of the Alabama:

I had been at the wheel about an hour before the collision; the bark is steered by a wheel. I moved the wheel sometimes a little one way and sometimes the other; it was not all the time to one side. I steered to follow in the wake of the tug. I did not notice the compass when I heard the whistle. I don't know how the bark headed by compass just before the tug blew her whistle. I was only looking at the tug.

55 I did not see either of the forts. It was night, and I was all the time looking at the tug. I did not see the Alabama before the tug blew her whistle; when I first saw the Alabama she was far off, but I cannot tell the distance. I did not see any of the Alabama's lights, except her cabin-light. I can't tell how long it was after the whistles were blown upon the tug before I put the wheel to starboard; it was very soon after; the pilot jumped down and helped put the wheel to starboard; the pilot did not remain there after the wheel had been put to starboard, but he went back upon the house and began to shout; that was the first shout from the bark. I held the wheel hard to starboard until the collision. I remained at the wheel until the collision. I never saw a vessel answer her helm quicker than the bark; she answered her helm very quickly; the bark upon the starboard helm swung off so as to point a little to the port side of the tug—a very little.

There was a little aperture in the back of the box in which the lights were through which I could see the light. I noticed the lights a short time before the collision. The lanterns were placed either in iron or thick tin—I don't know which. The lights were fastened to two little rings that are placed in the rail. I went up aboard the Alabama on the port side.

Cross-examined by the advocate for the Game Cock:

I did not hear any reference to the Alabama or any vessel till the Game Cock's whistle, and except them, none till the pilot jumped down to help with the wheel. The Ninfa had but the two lights set—green and red.

JOSE VIDAL.
W. B. GOFF.

Sworn to before me this 23d day of January, 1866, by the said Jose Vidal, the said W. B. Goff having been duly sworn as interpreter.

[L. S.] EDWARD J. OWEN,
Notary Public, N. Y. County.

56 U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

BLAZ ST. ANNA, being duly sworn and examined as a witness for the libellant in this cause, through William B. Goff, duly sworn as interpreter, testifies:

I have been a sailor since I was sixteen. I am now 47 or 48. I have sailed with the captain of the Ninfa since he was little more than a boy. I live at La Palma, where I shall go as soon as I can. I was on the

Ninfa at the time of the collision, and stood on the port side, aft. I saw the Alabama when the Game Cock whistled. She was then to the starboard of the Game Cock; can't say how much. The Alabama did not, that I noticed, change her course, but kept right on into us. There was plenty of room on our starboard side for her to go clear. The Ninfa could do nothing to prevent the collision.

The Ninfa was following in the track of the Game Cock. The Ninfa had her lights set. They were burning at the time of the collision very brightly, and had been since about five o'clock—a green light on the starboard and a red light on the port side.

The Ninfa's sails were all furled.

I saw the Ninfa's starboard light burning after I got on the Alabama.

It may have been three or four minutes after the collision that I got on the Alabama. First I ran aft, then forward, and got on the
57 Alabama. Up to that time I saw no one on or near the bow of the Alabama except the crew of the Ninfa. When we got on the Alabama her crew were eating—taking their supper.

Cross-examined on the part of the Alabama:

I was aft, about abreast of the after-hatch, when I heard the whistle. I was right by the side of the vessel. I heard two blasts of the whistle. The crew were all around the deck; there was nobody near me in particular; I had no business. I stood there looking until the collision. I had no watch in my hands, but I should think it was five minutes after the whistle before the collision. The Alabama struck the barque on her starboard bow. I saw the fort before the collision. The collision occurred a little below the fort. I can't say how far it was below. I could see the shore on that side, and could see lights in the houses on shore. I left the wheel at about five o'clock, and I was on the port side, where I have stated, or about all the time afterwards until the collision. The lights were set just after I left the wheel. The tug shouted to the Alabama, but not to us; they shouted after the whistles were blown. I did not notice whether, after the whistle, the barque headed to the port side of the tug. I only noticed that she was following after her.

Cross-examined by the advocate for the Game Cock:

I was standing on the port side of the Ninfa when the whistle blew. I went near the foremast to look, still keeping on the port side; climbed up on something to see. The Ninfa had only a green light and a red light set. I saw no lights on the Alabama.

BLAZ SANTANA.
W. B. GOFF.

Sworn to before me this 23d day of January, 1866, by the said Blas Santana, the said W. B. Goff having been duly sworn as interpreter.

[L. S.] EDWARD J. OWEN,
Notary Public, N. Y. County.

58 U. S. district court, southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

IGNACIO GARCIO CASTRO, being duly sworn and examined as a wit-

ness for the libellant in this cause, through William B. Goff, duly sworn as interpreter, testifies:

I live at La Palma, and shall go there as soon as I can. I was on the Ninfa as a sailor at the collision. I had been walking backward and forward on the starboard side of the deck, and when the Game Cock whistled was about midships. I did not see the Alabama before the whistles; immediately after, shortly after, I saw her; she was then coming towards us on starboard bow. I did not notice the tug then at all. The Alabama did not stop; she came right on ahead till she struck us. The Alabama, I do not think, changed her course at all. There was room for her to pass us on our starboard side—abundance. The Ninfa could not do anything to prevent the collision; the Ninfa had her lights set at the time, one red and one green, the green on the starboard and the red on the port side; they were burning very brilliant at the collision, and had been since sunset. The Ninfa was following exactly in the track of the Game Cock; I don't think she varied at all. I went on the Alabama soon after the collision; first ran aft, then a little forward, then aft, and then got on the Alabama. Up to the time I got on the Alabama there was no one on or near her bow; her crew were at supper below.

59 Cross-examined on the part of the Alabama:

There was no one right alongside of me on the starboard side; others of the crew were walking around there. I did not see the Alabama until after the whistle. I did not know what the whistle indicated. The Alabama was then pretty far off, but I cannot tell the distance; it was a very short time after the whistle before the men on the barque shouted. I did not notice the tug any time after the whistle and before the collision. I had not been very long walking up and down the starboard side before I heard the whistle; when I heard the whistle I looked up forward over the bow of the barque and saw the Alabama. I did not notice the Alabama's lights, but as she approached I saw her cabin-lights; she struck the barque on her starboard bow, between the fore-rigging and the cat-heads. I don't know whether it was nearest to the cat-heads. I think the hawser by which the barque was towed was 50 to 60 fathoms long, so that I think the tug was that distance ahead of the barque.

Being cross-examined by the advocate for the Game Cock:

The Ninfa had both her red and her green light set. I saw no lights of the Alabama but cabin-lights. The pilot had charge of our vessel at the time. In my judgment the Game Cock and Ninfa could not have got on the Alabama's port side without a collision.

his
YGNACIO GARCIA + CASTRO.
mark.

W. B. GOFF.

Sworn to before me this 23d day of January, 1866, by the said Ignacio Garcia Castro, the said W. B. Goff having been duly sworn as interpreter.

[L. S.] EDWARD J. OWEN,
Notary Public.

60 U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS.
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

JOSÉ ANTONIO CABRERA, being duly sworn and examined as a witness for libellants in this cause, through William B. Goff, duly sworn as interpreter, testifies:

I have been a seaman 14 or 15 years; have sailed on the Ninfa from the time she left La Palma, on Sept. 3, 1865, to the time she was lost by collision with the Alabama. I live at San Tereso, island of La Palma; am going home as soon as I can go. When the Game Cock whistled I was standing inside the kitchen. I was the cook. I did not come out till I heard the shouts; when I came out I saw the Alabama three or four points on the Ninfa's starboard bow, and the Game Cock was directly ahead of the Ninfa. I first looked over the Ninfa's bow, and saw the Game Cock directly ahead, or a little if anything to the starboard. The Alabama was nearly abeam of the Game-Cock, abreast of her starboard side, and three or four points to the starboard of the course from the Ninfa to the Game Cock. The Alabama did not change her course that I noticed, but appeared to steer right for the bow of the Ninfa, and kept on till she struck it; the whole river was on the starboard side for the Alabama to pass. There was no room for her to pass on the port side. The Ninfa had her lights burning at the time of the collision; they were lit at sunset; a green light on the starboard and red light on the
61 port side. They were very bright; had been lit but a short time and had been cleaned. I saw them cleaned. I ran to get on board the Alabama immediately on the collision. There was no one there either to help or to throw us a rope. I was not the first one to get on the Alabama. Can't tell how many got on before me, because as soon as they got on board they ran aft to get out of danger. Up to the time I got on the Alabama, I saw none of her people on or near her bow; they were all in the forecastle eating. After I got on the Alabama I saw the Ninfa's green light, on the starboard side; saw it till she went down. I could not see the red light, but could see the reflection of it shining after I get on the Alabama; could not see it because of my position.

Cross-examined on behalf of the Alabama:

I was inside the kitchen when I heard the whistle of the Game Cock. The kitchen is aft of the foremast and between the fore and main hatch; there is a door on each side of the kitchen. I was making coffee at the time of the collision; the men had taken their last meal; they were going to take coffee. I did not come out on deck when I heard the Game Cock whistle, nor until I heard the pilot of the Ninfa shout. I came out on the port side from the kitchen. When I came out on deck I walked right forward as far as the capstan, and then I saw the Alabama in the position I have already stated; the Alabama was not then very close to the bark, for I stood there some time looking at her, and the moment I saw there was danger, I ran aft as far as the cabin-door. The Alabama struck the bark before I got half way there. When I got to the capstan

all the crew were around there. There was one man on the bow looking—Roderiguez. I don't know whether he ran aft with me or not. I don't know that the hawser was cast off from the bark before the collision. When I got aboard the Alabama, I saw the lights of the Game Cock. I saw the usual steamer light; it is a usual light which steamboats carry. After I reached the deck of the Alabama, I walked aft. I did not run. I was not frightened.

62 Being examined by the counsel for the Game Cock, he says: The Ninfa had but her two lights, the red and the green set. I saw no lights of the Alabama.

his
JOSÉ ANTONIO + CABRERA.
mark.

W. B. GOFF.

Sworn to before me this 26th day of January, 1866, by the said José Antonio Cabrera, the said W. B. Goff having been duly sworn as interpreter.

[L. S.] EDWARD J. OWEN,
Notary Public, N. Y.

U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS
v.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Jose Perez, being duly sworn and examined as a witness for the libellant in this cause, through William B. Goff, duly sworn as interpreter, testifies:

I was a seaman on the Ninfa at the time of the collision; have followed the sea about sixteen years; had been on the Ninfa since she left La Palma, on September 3, 1865, where I reside, and where I shall return as soon as possible. I was near the fore-rigging when the Game Cock's whistles blew; when the whistles blew I saw the Alabama. I had not seen her before. When I first saw the Alabama she bore on the starboard bow of the Ninfa; can't say exactly how much, but three or four points off the starboard bow. The Game Cock was in
63 front of the Ninfa; she may have been a little to the starboard. The Ninfa was steering directly after the Game Cock; may have been a little to the port of her. I stood on the starboard side of the Ninfa just aft the fore-rigging. The other men of the Ninfa stood about on the deck. One man, the watch, stood right up on the bow—Francisco Rodriguez; can't say whether others stood forward of me. I remained standing near there till the very collision, which knocked me down. I then got up and ran. I kept looking at the Alabama all the time. I did not see the Alabama do anything but to come right down on us. She hit us on our starboard bow, forward of the fore-rigging. When I first saw the Alabama she was three or four times *or* as far off as from us to the Game Cock. The Ninfa could no nothing at all to prevent the collision. There was a great deal of room for the Alabama to pass the Ninfa on the starboard side.

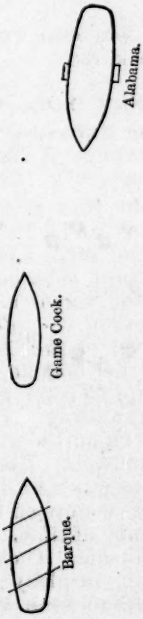
All the Ninfa's sails were furled when we took the tug, and remained

so till she went down. The Ninfa had her lights set, red on the port, green on the starboard side, on the rail aft the mizzen rigging. They had been burning, I think, since about five o'clock. The collision was about six o'clock. The lights were then burning clear and brilliant. After I got on the Aalab'ma I saw the Ninfa's starboard light. I got on the Alabama after the collision; ran first aft as far as the starboard light; stood there about a half minute; then saw the Ninfa's people getting on the Alabama, and I ran and did so too. Up to the time I got on the Alabama there was no one belonging to her on or near her bow. They were all in the forecastle taking their supper.

Cross-examined on the part of the Alabama:

When the whistle of the Game Cock sounded I was standing near the fore-rigging on the starboard side. I did not see the Alabama before the whistle. When I saw her she was three or four times the distance between the bark and the tug off from us, and bore from us a little to the starboard of the tug. The situation of the respective vessels at this time was this:

64



The bark headed a little to the port side of the Game Cock, after I first saw the Alabama. I don't know the length of the hawser; the end of the hawser was attached to the capstan and then carried to the "corna musa," where it was made fast, that being about midship on the port side. I don't remember very well which side it was. When I got aboard the steamer I remained some time on the bow, and then went down on the deck and walked about.

Being cross-examined by the advocate for the Game Cock, he says:

I saw no lights set on the Ninfa but the two, the red and green. I saw no lights on the Alabama except cabin-lights, bright lights. I don't think the tug with the Ninfa could have got on the Alabama's port side without being hit by her; the pilot had charge of our boat at the time.

his
JOSÉ + PEREZ.
mark.
W. B. GOFF.

Sworn to before me this 26th day of January, 1866, by the said José Perez, the said W. B. Goff, having been duly sworn as interpreter.

[L. S.] EDWARD J. OWEN,
Notary Public, N. Y. Co.

65 U. S. district court for the southern district of New York.

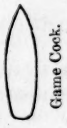
NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

MARIANO SANCHEZ, being duly sworn and examined as a witness for the libelant in this case, through William B. Goff, duly sworn as interpreter, testifies:

I was on the Ninfa at the time of the collision; have followed the sea twenty-four years. I live at La Palma, and am going there as soon as I can; whenever they send me. I heard the Game Cock's whistles. I stood at the time on the port side, near the fore-rigging. I did not see the Alabama before the whistles. When I heard them I went forward to the capstan, got on it, and then saw the Alabama. The Game Cock was right ahead of the Ninfa, and the Alabama to the starboard, considerably further off; at least twice the distance. The Alabama did nothing except to come right down on us till she struck us. When she got near I ran away. The Ninfa was going right after the Game Cock, a little to the port side. There was nothing the Ninfa could do to prevent the collision. Her sails were all furled, and she could not do a thing. There was no difficulty in the Alabama avoiding the collision. She could have stopped or gone clear of us on the starboard side. There was plenty of time. The Ninfa had her lights burning at the time of the collision. They were burning well; were very large lights, and were burning brightly; green on the starboard and red on the port side, and had been burning since sunset. I saw the
66 green light burning on the Ninfa from the Alabama. It burned until she sunk. I got on the Alabama as fast as I could after the collision, running as fast as I could, only waiting to take off my shoes. Some got on ahead of me. Up to this time I saw no one on or near the bow of the Alabama belonging to her. Her crew were in the forecastle;

don't know what they were doing there. When I first saw the Alabama the situation of the vessels was about thus:



Cross-examined on behalf of the Alabama:

When I heard the Game Cock blow her whistle I went to the capstan to look. I could not see the Alabama from where I was standing, nor until I got upon the capstan. I had to get upon something, as the side of the vessel was pretty high where I was standing. When I heard the whistle I went forward, as already stated, and looked over the bowsprit of the bark, and saw the Game Cock right in front. Then I looked to one side of the Game Cock and saw the Alabama.

Upon looking at the diagram showing the position of the respective boats given in the testimony of José Perez, he says: I think the Alabama, at the time he first saw her, a little more to the starboard. I think the Game Cock was directly ahead, but the Ninfa headed
67 towards the port quarter of the Game Cock. I did not see any of the lights of the Alabama.

Being cross-examined by the counsel for the Game Cock, he says:

The Ninfa had only the two lights. I saw no lights on the Alabama. The Game Cock and Ninfa could not have got to the other side of the the Alabama without a collision. In the position in which I saw them it was impossible.

his
MARIANO + SANCHEZ.
name.

W. B. GOFF.

Sworn to before me this 26th day of January, 1866, by Mariano San hez; the said Wm. B. Goff having been sworn as interpreter.

[L. S.]

EDWARD J. OWEN,
Notary Public, N. Y. County.

U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS
v.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

JUAN ANTONIO HERNANDEZ, being duly sworn and examined as a witness for the libellant in this cause, through William B. Goff, duly sworn as interpreter, testifies:

68 When the Game Cock blew her whistles I was working about on the port side of the Ninfa. I had been on her about five months. I did not see the Alabama before I heard the whistles. Then I saw her. The Game Cock was directly ahead, and the Alabama on the starboard bow of the Ninfa.

Being shown the diagrams in the depositions of Mariano Sanchez and José Peres, he says:

These diagrams show the relative situation of the vessels at the time. The one in the testimony of Sanchez is the most accurate, because the Alabama was farther to the starboard than is shown on the others. The Alabama was a little farther off than the Game Cock. I can't say how much, but farther off. The Alabama came right down on us and hit the Ninfa on the starboard bow; she made no change on her course that I saw; if the Alabama had kept on straight in the direction in which she was when I first saw her, she would have passed to the starboard of us; she had plenty of room on that side. The Ninfa could do nothing more than she did to prevent the collision. The Ninfa's lights were burning at the time of the collision—were burning first rate; red on the port, green on the starboard side. They had been burning since sundown. I saw the green light after I got on the Alabama still burning. I got on the Alabama after the collision in a very short time—as soon as I got over the surprise; some got on ahead, a good many after me. To the time I got on the Alabama I saw no one belonging to her near her bow; after a couple of minutes I went down on the deck of the Alabama, and then found her crew eating in the forcastle.

Cross-examined on behalf of the Alabama:

When I heard the whistle I was a little forward of midships, on the port side, and then I went forward to the capstan, and then I saw the steamer. I could not see the steamer until I got to the capstan, which is forward of the foremast, on the deck, in the centre; I think it is about three feet high. I got upon it. I saw the Alabama on a range just for-

69 ward of the knight-head, on the starboard side, between that and the bowsprit. The Ninfa then headed to the port side of the Game Cock. I think the Alabama, when I first saw her, was four times as far from the bark as the bark was from the Game Cock. The Alabama struck the bark on her starboard bow, between the knight-head and fore-rigging, but I think at the knight head. I stood on the bow of the Alabama until one of her spars fell, and then I ran aft. I live at La Palma, and am going there right away.

Being examined by the counsel for the Game Cock, he says: The Ninfa had no other lights but the two—the red and the green; I saw no lights on the Alabama; the Game Cock with the Ninfa could not possibly have got to the other side of the Alabama without a collision.

his
JUAN ANTONIO + HERNANDEZ.
mark.

W. B. GOFF.

Sworn to before me this 26th January, 1866, by the said Juan Antonio Hernandez, the said Wm. B. Goff having been duly sworn as interpreter.

[L. S.] EDWARD J. OWEN,
Notary Public, N. Y. County.

U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

70 MANUEL JUAREZ, being duly sworn and examined as a witness for the libellant in this cause, through William B. Goff, duly sworn as interpreter, testifies:

I live at La Palma; am going there right away. I was on the Ninfa at the time of the collision; had been on her two voyages; have followed the sea nine or ten years. I was below when the Alabama struck us, and had been since before the whistles blew; the Ninfa's lights were both burning brightly when I went below, and I saw them burning after I came on deck after the collision; and again, when I got on the Alabama, I still saw the green light, which was burning brightly; the red one could not be seen from where I was; when I got on the Alabama no one belonging to her was near her bow.

Being cross-examined by the counsel for the Game Cock:

The Ninfa had two lights—green and red—that was all: I did not see the Alabama's lights.

MANUEL JUAREZ.
W. B. GOFF.

Sworn to before me this 26th day of January, 1866, by the said Manuel Juarez, the said Wm. B. Goff having been duly sworn as interpreter.

EDWARD J. OWEN,
Notary Public, N. Y. County.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

GABRIEL LORENZO, being duly sworn and examined as a witness for the libellant, through William B. Goff, duly sworn as interpreter, testifies:

I live at La-Palma, where I am going immediately; I was on the Ninfa at the time of the collision, sick, below; came on deck as soon as I felt the blow, and then saw that the Ninfa's lights were burning brightly, and after I got on the Alabama the Ninfa's green light could be still seen.

71 Being cross-examined by the counsel for the Game Cock, he says:

The Ninfa had only two lights set—green and red. I saw no lights of the Alabama.

his
GABRIEL + LORENZO.
mark.
W. B. GOFF.

Sworn to before me this 26th of January, 1866, by the said Gabriel Lorenzo, the said Wm. B. Goff having been duly sworn as interpreter.

[L. S.] EDWARD J. OWEN,
Notary Public, N. Y. County.

U. S. district court of the United States for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

JOSÉ MARIA CABRERA, being duly sworn and examined as a witness for the libellants in this cause, through Wm. B. Goff, duly sworn as interpreter, testifies:

I live at La Palma, and am going there right away. I was on the Ninfa at the time of the collision; was below, and remained there till the Alabama struck us. I then ran on deck, and then got on the Alabama. No one belonging to her was then near her bow; they were all at supper. When I got on the Ninfa's deck I was in a flurry, and did not notice about her lights, but they were burning when I went below, about ten minutes before the collision, and when I got on the Alabama I
72 looked and saw that the Ninfa's green light could be seen, and was burning very brightly. The red light could not be seen from the place where I was. I saw the lights cleaned that day; they burned very well.

Cross-examined by counsel for the Game Cock:

The Ninfa had out two lights, red and green. I saw no light of the Alabama till I got on her deck; then saw her cabin light.

his
JOSÉ MA. + CABRERA.
mark.
W. B. GOFF.

Sworn to before me this 26th day of January, 1866, by the said José Ma. Cabrera, the said Wm. B. Goff having been duly sworn as interpreter.

[L. S.] EDWARD J. OWEN,
Notary Public, N. Y. Co.

U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Gamecock, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

GERONIMO PEREZ, being duly sworn and examined as a witness for the libellant, through William B. Goff, duly sworn as interpreter, testifies:

I live at La Palma, and am intending to go there as soon as I can. I was on the Ninfa at the collision; had sailed on her that voyage.

73 I have followed the sea fourteen or fifteen years. I heard the Game Cock's whistle blow; was then walking up and down on the Ninfa's port side, near the fore rigging. Did not see the Alabama before the whistle blew. Then I climbed up on the windlass and saw the Game Cock, which we were following, in her track. She was right ahead, and the Alabama was on the starboard side. I don't know how much further off.

The two diagrams being shown, he says:

The diagram in the deposition of Mariano Sanchez correctly shows the situation of the vessels. The Alabama came right on down to us until she hit us on the starboard bow. The Ninfa could do nothing to prevent the collision. If the Alabama had kept right on on our starboard side, which she could have easily done, there would have been no trouble. The Ninfa's sails were all furled. The Ninfa had her lights set, red on the port, green on the starboard side, which had been burning since about five o'clock, and were burning very bright at the time of the collision. I saw the green light burning from the Alabama after I got on her deck. I got on board the Alabama in a very short time after the collision. Up to that time no one but the Ninfa's people were on or near the Alabama's bow.

Cross-examined for the Alabama:

I could not see the Alabama until I climbed upon the windlass, which is forward of the foremast. I saw the Alabama over the starboard knight-heads. The bark was then following in the track of the tug. The bow of the bark at that time pointed to the port side of the tug. The bark pointed a little to the port, but I can't say how much. I did not see the Alabama before I heard the shouts of the men on the bark. I did not stand on the windlass until the collision, but I went aft and got about as far as the gangway when the collision occurred.

Cross-examined by Ch. Donohue, esq., appearing for the Game Cock:

The Ninfa was bound from Havana to New York, in ballast. The sails were furled all that afternoon. It was about mid-day when
74 we took the tug; don't know how many hours before the collision. I have stated all the lights the Ninfa had. They were set about five o'clock. I saw them set. I was walking about doing nothing when I heard the whistle. The pilot had charge of our vessel at the time. The windlass was on the main-deck. The Ninfa had a top-gallant forecastle, I don't know how much, but perhaps three feet, higher than the main-deck; don't know its length; can't tell whether five or twenty feet. I saw the Alabama coming when I got to the windlass; did not see her lights.

his
GERONIMO + PEREZ.
mark.
W. B. GOFF.

Sworn to before me this 26th day of January, 1866, by the said Geronimo Perez, the said Wm. B. Goff having been duly sworn as interpreter.

[L. S.] EDWARD J. OWEN,
Notary Public, N. Y. County.

(Endorsed:) U. S. district court. Nicholas de las Casa, vs. the Steamer Alabama, &c., and the Tug-boat Game Cock, &c. Depositions de bene esse of Bartolomé Martin et al. Man & Parsons, proctors for libell'ts.

75 U. S. district court for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-boat Game Cock, &c.

STATE OF NEW YORK,
Southern District of New York, ss:

MIGUEL DE LAS CASAS, being duly sworn, and examined as a witness for the libellant in this cause, through William B. Goff, duly sworn as an interpreter, testifies:

I am a native of the Canary Islands, a province of the kingdom of Spain. I do not speak the English language. My home is at La Palma. I am now making my arrangements to return home, and shall leave in a few days.

I was captain or master of the Ninfa de los Mares at the time of her loss, on December 15, 1865. The libellant, Nicholas de las Casas, was the sole owner of that vessel, and had been ever since she was built, which was in 1862 and 1863. I had commanded her ever since.

I am forty-one years of age. I have commanded a vessel for twenty-two years.

I was educated for the master of a vessel in the Maritime or Nautical College of Santa Cruz, Teneriffe, where I was for three years.

The Ninfa was a bark, 129 feet keel, or thereabouts, Spanish measurement—all the measurements I give are Spanish—thirty-three feet breadth of beam; eighteen feet depth of hold. She had two decks, with a house on deck in which was the cabin, which came as far for-
76 ward as the mainmast, extending aft to the wheel; below this, on the lower deck, was another cabin, extending from the mizzen-mast clear aft, both used for the first-class passengers, and giving accommodation for sixty-four (64) passengers. There were (12) twelve state-rooms in the cabin on deck—two arranged each for (5) five berths and the others for three, (3.) The lower cabin was divided into large rooms for the accommodation of families.

There was a forecastle in the bow for the crew, and astern of that a second cabin under deck, with accommodation for about (40) forty, with berths. The after house did not go clear across the vessel—a passage was left all around. The forward cabin extended from forward of the foremast aft, about thirty feet, (30 ft.) It extended clear across.

She had carrying capacity, in addition, according to my estimate, for 2,500 boxes of sugar under deck, and was of the burthen of 477 Spanish tons.

She was completely furnished with sails and rigging of the best; two complete sets of sails—one of Russian hemp, new, and the other, which she was using, about three years old, made of cotton duck, in New York, by Henewenjcog & Beverig.

Her rigging was all of the best Russian hemp, and she had new rigging on board to replace everything less than 4 in. diameter. She had also *had* three cables, one very large; four chains, (4), and five anchors, (5,) one very large for a vessel of that size, of 500 tons.

She had also spare topmast and top-gallant mast, and main-topsail yard.

The Ninfa was built at La Palma, by the libellant, who is a ship-builder, of the wood of this country, which we call "téa." The deck

was of Charleston yellow pine; the cabin of solid mahogany; all was built of the téa except the deck, cabin, and rail. Such a vessel will last for fifty years. Her spars came from C. & R. Poillon, of New York; were bought by Messrs. C. Marti & Co., of New York, who also bought the sails and much rigging; her blocks, which were all patent,
77 were also bought through C. Marti & Co. I was here, and bought all these things. Messrs. C. Marti & Co. paid for what I bought. The Ninfa was never in New York. She had also a chronometer, three compasses, a barometer, a thermometer.

Q. Do you know the value of such a vessel in New York?

A. I know from enquiring the price of other vessels. I have not made any particular effort to inform myself of the price of vessels in New York.

Q. From the inquiry you have made, what, in your judgment, was the value of the Ninfa in New York?

(Objected to.)

A. From sixty to $80,000 dollars. She had double knees for the upper deck, fastened with copper; three rails, one above the other, running from bow to stern, to carry the decks. She was sheathed with pure copper; no composition.

Q. Do you know the value of such a vessel in La Palma?

(Objected to.)

A. I do.

Q. What is such a vessel worth there?

(Objected to.)

A. From thirty to forty thousand dollars in gold. The Ninfa was the finest vessel ever built in the Canary. The Grand Canarios, which came to New York consigned to Macarty, was also built at La Palma, of the same kind of wood, though not so solidly built. She is a ship, but not worth so much as the Ninfa. The brig San Miguel, built at La Palma, and thirty years old, was repaired by C. & R. Poillon, of New York, in 1862 or 1863. She was poorly built in part of the same wood as the Ninfa—a small vessel. She was a light-built vessel, only designed to carry fruit. These are the only two La Palma vessels which I have known to have been in New York.

78 The libellant had on the Ninfa, at the time, the sum of two hundred and thirteen Spanish doubloons, (213;) ship-stores worth about one hundred Spanish doubloons. She was fully found with cabin furniture, linen, crockery, and everything complete.

JUNE 5.—Examination resumed:

Since the examination was interrupted, I have prepared a full description and statement in respect to the Sea Nymph, (Ninfa de los Mares;) a translation of it is annexed. It has been translated back to me, and is correct; that statement is true. In addition to what appears in the statement, there was on board of the Ninfa two hundred and thirteen (213) Spanish doubloons; also, ship-stores worth about one hundred (100) doubloons. I don't remember anything else. I had on board, at the time, my watch, clothing, jewelery, nautical instruments, of the value of fifty-six (56) doubloons. All these things which I have now mentioned were lost with the vessel. There was also property on board of the mate. Efforts have been made to raise the Ninfa. I made the contract the day I arrived here—the day after the collision—with the Coast Wrecking Co. They went there to try to raise her, and continued for about five months. Then went to the Columbian Wrecking Co.;

don't know of any other company. A man named Beers I made a contract with to save what he could that was on board.

The only thing that has been saved *has been*, and that by Beers, so far as he gave it to me, was a barometer and a quadrant, two rings, and a breastpin, and some sleeve-buttons; all of the value, in their condition, of two doubloons. I don't know of anything else being saved, except that I heard that a diver had got up some gold.

We took the pilot on December 14, 1865, outside of Sandy Hook, and on December 15, 1865, about noon, took the tow, the tug-boat Game Cock; she came alongside, on our port side, and I made a bar-
79 gain for her to tow us to New York, through the pilot, with whom I communicated by signs. I had been to New York once before.

One of our cables was then carried from the Ninfa to the Game Cock, fastened to her stern, and made fast to our vessel, passing over her port side two or three feet from the stern. The whole thing was attended to by the pilot, and on the Game Cock by, I suppose, her captain; saw one on her.

We took the tug outside Sandy Hook; then furled our sails; furled them close, and they remained so.

There was a wind from the northwest or north-northwest—a head wind for us—and blowing pretty fresh.

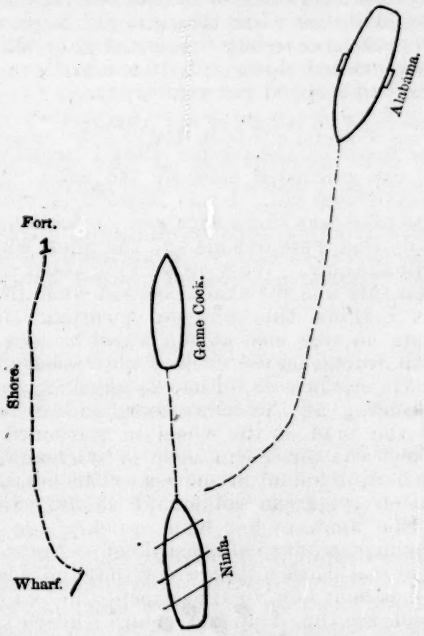
I saw the Alabama when the Game Cock blew her whistle; it was a double whistle. This was between five and six o'clock in the evening; it was not dark; was a short time after sunset; was very clear starlight, as it always is with the northwest wind on this coast.

The Alabama was coming out as we were going in. She kept on towards us, and when she got near to us seemed to run right into us—to change her course. When she struck us we were within 100 yards of the shore, just above the Fort Tompkins' light and just below the fort on the Staten Island side of the Narrows. I stood on the top of the cabin-house, moving about with the pilot; had been there five minutes, perhaps; was up and down. José Vidal was at our wheel. I ordered him to obey the pilot, and to keep the Ninfa right in the track of the Game Cock and to follow her chimney.

When I first saw the Alabama she was about twenty degrees on our starboard bow, and heading so that if she had continued as she was then heading, she would have passed on our starboard side. She bore to the starboard of the Game Cock, and about 200 yards English ahead of her.

Q. Draw underneath this question a diagram which shows the relative situation of the vessels when you first saw the Alabama.

80 A. The witness does so, as follows:



As the Game Cock blew her double whistle she headed in more towards the shore, and so did we. When we noticed that the Alabama was coming down to us the Game Cock changed her helm so as to go to port, and so did we.

If the Alabama had continued on her same course she would have cleared us. Instead of that, she steered towards us, and came right into us. When she got near to us we shouted and hollered to her, but she paid no attention; she seemed to be steering right at our bow, and she hit us on the starboard side, between the knight-heads and the fore rigging.

The Alabama did not, that I observed, slack her speed. She was going at full speed all the time. There was room enough for the Alabama to pass on our starboard side. If you divide the channel into ten parts, she had nine with no vessel in her way.

The barque had her lights set; red light on the port side, green on the starboard side, on the rail abaft the mizzen rigging, about nine or ten feet above the deck. They were splendid reflecting lights; could be seen a distance of five miles, and were burning very brightly at the
81 time. I saw them almost at the instant of the collision. I ordered them lighted myself; they were lighted at sundown. They were large ship-lights, patent, made for the purpose, set in a side box, so that you can't see them from behind. I saw the green light until it went under water; saw it from the Alabama. The cabin prevented seeing the red.

The Ninfa sunk in a very little time after the Alabama hit her. I got on board the Alabama by the fore rigging, onto the Alabama's anchor.

There was no one on the Alabama's bow when she struck, so far as I saw; saw no one on her at all until after the collision, when I got on deck, and just before I did three or four of her crew ran up on her bow. The Ninfa could do no more than she did to prevent this collision. The Alabama could have easily prevented it in either of three ways: 1. If she had kept on her course. 2. If she had gone over to our starboard. 3. If she had stopped her machinery.

Cross-examined on behalf of the Alabama:

I stood on the house of the barque when I heard the whistles of the Game Cock, on the starboard side aft the main rigging, and within three or four feet of the rail. I was forward of the wheel, which was behind me. The pilot was there with me. I don't remember his name. There was nobody else there but me and the pilot, who stood in front of me, more towards the bow. We were walking about the top of the house. I cannot say that this was our exact position when the Game Cock blew her whistle, but I think this was our position. José Vidal had the wheel; there was no one else at the wheel besides him at that time. The men were all around on the deck of the vessel. When I heard the whistle of the Game Cock I did not do anything, but a minute or so after I was standing at the cabin-door, and then I saw the pilot by signs order the man at the wheel to starboard the wheel, and he did so; the wheel was put clean over to starboard. I can't tell how much the barque fell off in answer to this helm, but, judging from
82 her position after the collision, I should think she fell off two points. She answers her helm quickly. It was a very short time after the helm was put to starboard before the collision. The helm was not so put to starboard until we saw that the Alabama was coming into us. I did not hear any whistles except the two blasts of the Game Cock. I did not see the Alabama before I heard the whistle. I was not looking. I looked up after hearing the whistle, and before I went to the cabin-door, and then I saw her between the main and the mizzen rigging. I saw the Game Cock at the same time a little over the barque's starboard bow. I could see the smoke-stack of the Game Cock. I should think the barque was going about three miles an hour. There was plenty of sea-room for the Game Cock to have passed the Alabama, leaving her on her port side; there was room enough for the Game Cock to have passed to the eastward of the Alabama. The barque had no other lights except those which I have described. She had lights in her cabin. I did not notice the compass of the barque. I never looked at the compass. I saw no lights on the Alabama. I saw a light on the Game Cock. I saw one light; it was towards her bow; it was a white light, and twelve or eighteen feet from the deck. I saw no other light on the Game Cock. I don't remember to have seen any other light on the Game Cock after I had got aboard the Alabama. I went down into the cabin and went out upon the deck, and had got there before the collision. I can't tell, but I suppose I was two or three minutes there before the collision. When I heard the whistle I saw the Game Cock a little over our starboard bow, as I stood on the starboard side of the house, but she was then directly ahead from our bow. The hawser by which the barque was towed was fifty or sixty fathoms long, Spanish measurement. The foregoing drawing represents the relative position of the vessels, as nearly as I can state, at the time the whistle was blown. I suppose the barque was heading about north-northwest.

83 The barque was partly insured in Barcelona, Spain; I don't know that she was valued in the policy. I can't give the exact cost

for building the barque, but I think it was from thirty to forty thousand dollars in gold, the currency of the country, or rather Spanish milled dollars. The valuation which I have placed upon the vessel at the time of her loss was in the United States paper currency. She was worth from thirty-five to thirty-six thousand dollars in gold at the time of her loss. That includes all her tackle, apparel, furniture, spare sails, and rigging, and whatever would go with her if she was sold.

I can't state what ship stores were on board at the time of loss; that belongs to the steward. The majority of the stores were shipped in the Canary Islands, and I also took some in Havana. The cabin furniture consisted of chairs, tables, benches, crockery, table-cloths, napkins, &c.

I heard that the diver got up about twenty-nine doubloons.

My property, which I have stated to be of the value of 56 doubloons, consisted of my clothing, watch, jewelry, and nautical instruments and trunks.

Redirect:

Q. How long before the Game Cock's two whistles were blown had she been sailing on a straight line without change of course?

A. I cannot state the exact time but it had been a considerable while.

Q. When you first saw the Alabama, at the time the Game Cock blew her two whistles, what would have been the result of an attempt by the Game Cock to pass to the eastward of the Alabama?

(Objects to substance.)

A. She could not; it would have been an impossibility. There was plenty of room to the eastward, but the Game Cock could not get there; it would have been very dangerous—danger of a collision.

The ship stores consisted of liquors, wines, sweetmeats, meal,
84 vegetables, rice, fish, flour; can't think of other things; there was tea, coffee, sugar, lard, butter, pigs, sheep, fowls, about 50 parrots, a dog, and other things.

The cabin-house did not extend to the rail; there was a passage on each side between, and that passage was five or six feet higher than the main-deck; the cabin berth extended under it.

Recross, on behalf of the Alabama:

Q. Which way is the Alabama supposed to be heading by the above diagram?

A. About south. I think the barque was from 40 to 50 fathoms, or from 80 to 100 yards, English, astern of the Game Cock.

MIGUEL DE LAS CASAS.
W. B. GOFF.

Sworn to before me this seventh day of June, 1866, by the said Miguel de las Casas, the said William B. Goff having been duly sworn as interpreter.

[L. S.] CHARLES D. INGERSOLL,
Notary Public, City and County New York.

This deposition may be read on the trial of the above-entitled suit with like effect, as if regularly taken de bene esse before a commissioner, and subject to all legal objections.

New York, June 7, 1866.

OWEN, GRAY & OWEN,
For Alabama.
BEEBE, DEAN & DONOHUE,
For Game Cock.

There was no one on the Alabama's bow when she struck, so far as I saw; saw no one on her at all until after the collision, when I got on deck, and just before I did three or four of her crew ran up on her bow. The Ninfa could do no more than she did to prevent this collision. The Alabama could have easily prevented it in either of three ways: 1. If she had kept on her course. 2. If she had gone over to our starboard. 3. If she had stopped her machinery.

Cross-examined on behalf of the Alabama:

I stood on the house of the barque when I heard the whistles of the Game Cock, on the starboard side aft the main rigging, and within three or four feet of the rail. I was forward of the wheel, which was behind me. The pilot was there with me. I don't remember his name. There was nobody else there but me and the pilot, who stood in front of me, more towards the bow. We were walking about the top of the house. I cannot say that this was our exact position when the Game Cock blew her whistle, but I think this was our position. José Vidal had the wheel; there was no one else at the wheel besides him at that time. The men were all around on the deck of the vessel. When I heard the whistle of the Game Cock I did not do anything, but a minute or so after I was standing at the cabin-door, and then I saw the pilot by signs order the man at the wheel to starboard the wheel, and he did so; the wheel was put clean over to starboard. I can't tell how much the barque fell off in answer to this helm, but, judging from
82 her position after the collision, I should think she fell off two points. She answers her helm quickly. It was a very short time after the helm was put to starboard before the collision. The helm was not so put to starboard until we saw that the Alabama was coming into us. I did not hear any whistles except the two blasts of the Game Cock. I did not see the Alabama before I heard the whistle. I was not looking. I looked up after hearing the whistle, and before I went to the cabin-door, and then I saw her between the main and the mizzen rigging. I saw the Game Cock at the same time a little over the barque's starboard bow. I could see the smoke-stack of the Game Cock. I should think the barque was going about three miles an hour. There was plenty of sea-room for the Game Cock to have passed the Alabama, leaving her on her port side; there was room enough for the Game Cock to have passed to the eastward of the Alabama. The barque had no other lights except those which I have described. She had lights in her cabin. I did not notice the compass of the barque. I never looked at the compass. I saw no lights on the Alabama. I saw a light on the Game Cock. I saw one light; it was towards her bow; it was a white light, and twelve or eighteen feet from the deck. I saw no other light on the Game Cock. I don't remember to have seen any other light on the Game Cock after I had got aboard the Alabama. I went down into the cabin and went out upon the deck, and had got there before the collision. I can't tell, but I suppose I was two or three minutes there before the collision. When I heard the whistle I saw the Game Cock a little over our starboard bow, as I stood on the starboard side of the house, but she was then directly ahead from our bow. The hawser by which the barque was towed was fifty or sixty fathoms long, Spanish measurement. The foregoing drawing represents the relative position of the vessels, as nearly as I can state, at the time the whistle was blown. I suppose the barque was heading about north-northwest.

83 The barque was partly insured in Barcelona, Spain; I don't know that she was valued in the policy. I can't give the exact cost

for building the barque, but I think it was from thirty to forty thousand dollars in gold, the currency of the country, or rather Spanish milled dollars. The valuation which I have placed upon the vessel at the time of her loss was in the United States paper currency. She was worth from thirty-five to thirty-six thousand dollars in gold at the time of her loss. That includes all her tackle, apparel, furniture, spare sails, and rigging, and whatever would go with her if she was sold.

I can't state what ship stores were on board at the time of loss; that belongs to the steward. The majority of the stores were shipped in the Canary Islands, and I also took some in Havana. The cabin furniture consisted of chairs, tables, benches, crockery, table-cloths, napkins, &c.

I heard that the diver got up about twenty-nine doubloons.

My property, which I have stated to be of the value of 56 doubloons, consisted of my clothing, watch, jewelry, and nautical instruments and trunks.

Redirect:

Q. How long before the Game Cock's two whistles were blown had she been sailing on a straight line without change of course?

A. I cannot state the exact time but it had been a considerable while.

Q. When you first saw the Alabama, at the time the Game Cock blew her two whistles, what would have been the result of an attempt by the Game Cock to pass to the eastward of the Alabama?

(Objects to substance.)

A. She could not; it would have been an impossibility. There was plenty of room to the eastward, but the Game Cock could not get there; it would have been very dangerous—danger of a collision.

The ship stores consisted of liquors, wines, sweetmeats, meal,
84 vegetables, rice, fish, flour; can't think of other things; there was tea, coffee, sugar, lard, butter, pigs, sheep, fowls, about 50 parrots, a dog, and other things.

The cabin-house did not extend to the rail; there was a passage on each side between, and that passage was five or six feet higher than the main-deck; the cabin berth extended under it.

Recross, on behalf of the Alabama:

Q. Which way is the Alabama supposed to be heading by the above diagram?

A. About south. I think the barque was from 40 to 50 fathoms, or from 80 to 100 yards, English, astern of the Game Cock.

MIGUEL DE LAS CASAS.
W. B. GOFF.

Sworn to before me this seventh day of June, 1866, by the said Miguel de las Casas, the said William B. Goff having been duly sworn as interpreter.

[L. S.] CHARLES D. INGERSOLL,
Notary Public, City and County New York.

This deposition may be read on the trial of the above-entitled suit with like effect, as if regularly taken de bene esse before a commissioner, and subject to all legal objections.

New York, June 7, 1866.

OWEN, GRAY & OWEN,
For Alabama.
BEEBE, DEAN & DONOHUE,
For Game Cock.

General description of the Spanish barque Ninfa de los Mares, (Sea Nymph,) 477 Spanish tons burden, as shown by her papers.

This vessel was built at Las Palmas, one of the Canary Islands, of the timber of the country, which is reputed to be of the best kind in the world for its durability both in the water and out of it; the decks and dead-works are of Charleston pine. She was built in the strong-
85 est manner known to naval architecture, in accordance to her tonnage, and for the purpose of a transport, in which service she was employed in the six voyages to Havana, being the only ones she has made.

She had two stationary decks, with double knees on each beam. All her knees and crooked timbers were natural; three heavy clamps where the knees are bolted to the water-ways, from the inner to the outer side; and from the lower to the upper, a heavy water-way unites the knees to the timbers, forming a streak in the deck, with an entirely open board; fire streaks in the deck bolted above and below, and inside and outside, one streak of the fashion-piece to midship, and another from the walls to the foot of the stem; the stem, the stern-post, and the keel from curves or knees at the extremities, and are bolted together, and then a great verticle knee is bolted on top; another streak between the two decks. She has an elliptic or round stern, formed by a strong frame and transom morticed to the stern-post, all solid to near to the mizzen-mast, with large knees to the fashion-piece; the bows are formed with two natural stems entire and solid, with natural knees, and continued by streaks; a kelson formed of two pieces very thick, and bolted to each floor timber from the inner to the outer side; has a cabin on deck which reaches to within two feet of the mainmast, a bath-room, a caboose, two forecastle, and a fine capstan. The false dead-works are in panels, each having a different landscape carved upon it; the belaying-cleats are of mahogany, the racks of the mast are of iron, and those of the sides are of wood and brass from stem to stern; patent windlass and other machinery; iron and brass railing from the main rigging to the stern; two iron and brass pumps. The cabin on deck has two doors in the forward part, a closet, a *nitch*, bar-room, and library or reading-room; on the sides two state-rooms with 5 berths each, eight with 3 berths each, and 2 larger ones with closet, settees, etc., all of good quality. The table and seats are of mahogany, and of the entire length of the cabin.
86 The cabin is mahogany and wood painted white, with gilt cornices and columns; has sky-lights and three lamps; further aft it has 2 state-rooms, 2 closets or lockers, and 2 water-closets. A mahogany and brass railing leads to the lower cabin aft. This cabin has 12 double berths; is painted white; the store-room is in the after part. Forward under deck it has a cabin for steerage passengers, painted white, and which can accommodate 100 passengers; it has 40 berths; more forward still it has a sail-room for spare sails; and yet more forward has another cabin for the crew, with berths and lockers, and under it another for the luggage, and below that the coal-bunker. She is coppered and entirely copper-fastened. She has a head representing a full-sized sea-nymph, with carvings representing marine plants; a large shell at her feet, from which she appears to egress, and gilt carvings and the name of the vessel. On the stern there is a hyroglyphic representing an island, a palm-tree, and two flags, gilt carvings and the name of the vessel, reaching almost to the mizzen chains. The spars and rigging, both running and standing, are quite new. The tops of the lower mast are mahogany and Virginia oak, with the name of the vessel in gilt letters; the top cross-

trees of mahogany and iron; Russia-hemp shrouds, and the running rigging of Manilla rope. The blocks are of the best New York make; two chains corresponding to her burden and two lighter ones, 5 anchors, 3 hawsers, carpenterss' and coopers tools, water-casks, kettles, plates, *and* etc., for the use of the steerage passengers and crew. The cabin was fully supplied with crockery, china, and glass ware of the best quality, table-cloths, napkins, &c., three boats and davits, 2 eight-pounders with their appurtenances and ammunition, and many other articles I do not remember. She has all her cotton-canvas sails made in New York, and a spare suit of Russian duck, new, and 15 pieces of canvas. She had also a chronometer, a barometer, a thermometer, and eighty flags representing the different provinces of Spain; also telegraph and fancy flags.

(Endorsed:) U. S. district court. Nicholas de las Casas v. the
87 Steamer Alabama, &c., and the Tug-boat Game Cock, &c. Deposition of Miguel de las Casas. Man & Parsons, proctors for libellants.

Consent to examine witness de bene esse.

U. S. district court.

THE STEAMSHIP ALABAMA, &C., IMPLEADED, *ads.* NICHOLAS DE LAS CASAS.

It is hereby consented that Otis Pendleton, James A. Shafer, George F. Smith, George W. White, Peter Masten, and John Pullin be examined de bene esse in this cause as witnesses on the part of the Alabama, at the office of Owen, Gray & Owen, No. 72 Wall street, on Thursday, the 12th day of July, inst., at 12 o'clock noon of that day; that the deposition' of the said witnesses, when sworn to before a commissioner of deeds or a notary public, may be read in evidence by either party on the trial, reference, and other proceedings in this cause, with the like effect, subject to all exceptions to the competency and admissibility of the testimony, as if the same had been taken before a commissioner of the court, under a notice issued for that purpose; that the same need not be filed unless required by ten days' written notice, but may remain in the possession of the claimant's proctors, a copy thereof being furnished to the libellant's proctors.

Dated New York, July 10, 1866.

MAN & PARSONS.
BEBEE, DEAN & DONOHUE.

(Endorsed:) U. S. district court. The Steamship Alabama vs. Nicholas de las Cases. Consent to examine witnesses for claimants. Owen, Gray & Owen, claimant's proctors.

88 U. S. district court.

THE STEAMER ALABAMA, HER ENGINES, &C., the Coastwise Company, claimants, *ads.* NICHOLAS DE LAS CASAS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

JOHN PULLIN, a witness produced and examined de bene esse on the part of the claimants, deposes and says:

I am 28 years old, and reside at 547 Greenwich street. I am a seafaring man, and expect to go to sea before long. I don't know how soon

I have followed the sea fourteen years. I was on board of the Alabama at the time of the collision between her and the Spanish barque Ninfa de los Mares down in the Narrows. I was quartermaster. I was on the lookout, standing on the starboard side of the pilot-house, which is on the hurricane-deck. I had been there twenty minutes. I saw the steam-tug some distance off; I cannot state exactly how far; she bore about a point on our port bow. I noticed her lights; I saw two lights; I saw a red light and a white light; the white light was higher up; the pilot was standing on the port side of the pilot-house; saw the steam-tug at the same time; the next I heard the pilot order the man at the wheel to port it; then to steady the wheel; the next I saw the tug-boat crossing our bow from the port side to starboard side; the next I heard was a hail from the tug-boat, saying starboard your helm or you will be into that barque astern of us. I could not see the barque at that time. I went in and helped heave the wheel to starboard; got it hard over about the time we struck. I should think the steam-tug was about thirty feet from our bows when she crossed over. I did not see any
89 lights on the barque. As the tug-boat crossed our bow I saw her starboard light; it was a green light. I saw no other lights on the tug-boat than the red, green, and white lights before mentioned. After the collision the tug-boat let go her hawser and went off quite a way from us. I saw one man standing on the forecastle deck when I was on the lookout; I cannot say who it was. It was quite a dull night; quite a shadow on the water. I don't think you could see lights very clear that night. The steamer had a red light on her port side, green light on her starboard, and a white light at masthead; they were all burning brightly. I put them up myself. The Alabama was bound out to sea with freight and passengers.

Being cross-examined for the libellants:

The Alabama had a crew of six men before the mast, captain, first and econd mate; we also had four quartermasters. I was the one who was then acting as the regular lookout, and had been doing so for twenty minutes. The crew had, at this time, been divided into watches, and the watches set. I was in the first officer's watch. He was at the time on the port side of the pilot-house. I saw him there.

Q. What other men did you know to be on deck at the time, and where were they stationed?

A. There was a man on the forecastle; I saw him there; can't say his name. He is the only one of the crew I knew to be on deck at the time. The pilot and chief engineer were up in the pilot-house at the time. It was about twenty minutes past six. The men were getting their suppers below. The main deck with the forecastle extends some forty feet forward of the pilot-house. The pilot-house is in the forward part of the house on deck, which is about twenty-five feet long. I stood on the starboard side right alongside of the pilot-house door; there is about three feet of the pilot-house forward of the door; there was nothing to prevent my standing right up to the rail. The Alabama is schooner-rigged. The foremast stands about ten feet forward
90 of the fore hatch. The foremast stands about sixteen feet forward of the pilot-house. The sails were furled at the yards. The foresail is a square sail. There was one man at the wheel—Peter Masterson. The chief mate stationed me on the lookout; gave me my orders. When I saw the tug I spoke to the pilot, and he said he had seen it. I said a steamer ahead. The quartermasters' duties are the same as those of the men before the mast, except that the quartermasters alone steer.

At sea they generally steer and look out. They are always standing on the lookout. The tug-boat was about a half mile off when I first saw her, and she bore about a point on our port bow, and continued to do so for some two (2) minutes. We were heading about south, and I should think not more than 300 to 400 yards—about 300 yards—from the land. The order to port on our vessel was about midway between my first seeing the tug and the collision; don't think the ship sheered more than a quarter of a point before sung out to steady again. I saw no lights on the bark at all. I looked to see whether there were any. I did not see her ten seconds before the collision. I saw no lights on the bark after the collision. I looked then to see if there were any. I heard orders given to our engine-room; can't remember whether or not it was a starlight night. In my judgment you could see a ship's light over half a mile that night. Our men came on board that morning at seven o'clock. We left the wharf about five o'clock.

Redirect:

I did not discover that the steam-tug had the bark in tow until after she had crossed our bows. I did not see the vessel until after they sung out to take care or we would be into that vessel. I think some of our watch were taking supper at the time, but I have no certainty about it. The Alabama tried to clear the Ninfa, as soon as I saw her, by putting the helm to starboard.

By the Game Cock:

Been to sea; been on steamers off and on twelve years. I was quartermaster on the Illinois. I heard no signal from the boat until I heard the hail I speak of; and the hail was of some man hollowing
91 to me. I looked to see how near we were to Staten Island. We were close in. We were as close in as we could go safely to the west shore or channel. I was standing at starboard side of pilot-house when I saw the tug. I acted as lookout on all the vessels I was quarermaster in. There were besides myself the men to perform any work. I had had my supper one hour before. She left New York at 5 p. m. She continued straight on to this place. She had ran about eight miles. She made about six to seven knots an hour; that is not her usual . She can go ten knots. After the collision she went about four miles an hour; that was on our way back. I don't think that it was any darker on our way back than out. It was immediately after we saw the tug that our helm was changed. It is hard to come to it exactly. It was half a minute between, as near as I can tell. I had been before going on watch; did nothing except put the lights up. From time I went on lookout up to collision I was doing nothing. I was put on lookout by the first officer, and I remained near the starboard side of the pilot-house all the time.

By the libellants:

I still mean to say we were 300 to 400 yards from shore.

JOHN PULLIN.

Sworn to before me July 13, 1866.

[L. S.] CHARLES D. INGERSOLL,
Notary Public, N. Y. City and County.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

OTIS PENDLETON, a witness, produced and examined de bene esse on the part of the claimants, deposes and says: I am a seafaring man. I

have followed the sea 'most seventeen years, and when in port I reside at No. 54 Broome street. I was on the Alabama at the time of the collision between her and the Spanish bark. I was first officer. It was my watch on deck; it was the dog-watch. No regular watch had been set except the dog-watch. There are five men altogether in my
92 watch besides myself—three seamen, two quartermasters, and myself. There was a pilot on board who had command of the steamer; he was forward by the pilot-house, standing by the rail at the forward part of the pilot-house. I first saw the tug-boat when she was coming out on our starboard bow. I was then walking from aft forward on the hurricane-deck. I saw the green light and bright light—masthead-light. I only saw these two; she was about half way across our bows when I first saw her. I did not see the bark at that time. The tug-boat was not over the length of our ship from us at that time—short of a hundred yards. I heard a hail from the tug-boat about the time I reached the rail forward; the hail was to hard-a-starboard or we would be into that bark astern of us. I then went right around on the port side of our pilot-house, and by the time I got around the collision occurred. I went about sixty feet to reach that point; I stepped pretty quick. The collision did not occur before I reached that place; then I saw the bark. The steamer was then, as you may say, right top of her. I did not see any lights on the bark; I can't say that I looked for a light in particular, but I did not notice any. I did not notice any on her after the collision. The steamer was very handy into land on the west shore near the fort; we were probably from two to three hundred yards from the shore; I am pretty sure that we were very handy to the shore. I had been down on the main-deck, seeing that things were properly lashed for going to sea, and was coming upon the hurricane-deck at the time I saw the tug-boat. I had not been off the deck more than five minutes; I just went below to see about the work and return. The steamer's lights were burning bright at the time. I suppose you could discover a vessel's light that night from three-quarters of a mile to a mile. I heard a whistle from the tug-boat about the time of the hail from her; that is, I think it was about the same.
I cannot tell now whether it was one or two blasts. I did not as-
93 certain that the tug-boat had a vessel in tow until I heard the hail. I saw a watch on the forecastle at the time, but I cannot say who he was; we always have a watch on the forecastle, besides the quartermaster on the hurricane-deck.

(Objected to.)

I should think the bark was on a fifty-fathom line; I can't tell exactly.

Being cross-examined for the libellants:

I did not see the Game Cock till she was within one length of us, and up to that time had not been where I could see her. I was on the main deck about five minutes. I did not stop over two or three seconds at the rail. I then saw a man on the forecastle-deck; there were some passengers on the hurricane-deck. Sailing vessels are very often towed into the harbor; of course we expect to meet them; we have to meet them and pass them. On a very clear night you can see a vessel's side-light three miles. Don't remember how the wind was. The atmosphere is ordinarily clear with a west or northwest wind; don't remember whether or not it was starlight.

Cross-examined for the Game Cock:

The collision took place very near off the fort on Staten Island, about abreast of it; that is my judgment where it took place. I don't know what the lower end of Staten Island is considered. I can't tell how far Staten Island extends. I consider that fort near the lower end of Staten Island. I did not see the light of the tug or barque before I went on the lower deck; I did not hear any reference to them. I was about, when I first saw the tug-light, I was about 30 feet aft of the rail; was in front of the pilot-house. I did not have my attention called to the light in any way; I saw it first; I walked forward to the rail. I can't tell which, the hail or whistle, was first, but I don't think there was a minute difference. I don't think any part of the tug had got to the northward of us before I heard the hail. Up to the time that I heard the hail or whistle, I had not heard any one refer to the tug or about her.

94 Q. From the time you saw the tug's lights up to the time of the hail, had anything been done on your vessel that you know or heard?

A. I heard the pilot give orders to starboard the wheel. I heard orders for the bell to stop; it was not given before I heard the hail or whistle. I put the quartermaster on the lookout. I gave no order or direction as to the wheel or engine up to the time of the collision.

Again examined for the libellant:

Q. Do you mean to swear that between the time you first saw the lights of the tug, and the hail from her, you heard the order to starboard?

A. I think it was, according to the best of my belief; I don't mean to be sure. The first thing I saw of the tug was her masthead-light; and when I first saw it, it bore about a point on our starboard bow.

(Upon the foregoing deposition being read to the witness, he wishes to correct the statement in his direct examination that he was coming upon the hurricane-deck at the time he first saw the tug; instead of which witness says he was on the hurricane-deck at the time he saw the tug.)

OTIS PENDLETON.

Sworn to before me July 13, 1866.

CHARLES D. INGERSOLL,
Notary Public, N. Y. City and County.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

GEORGE W. WHITE, a witness produced and examined de bene esse on the part of the claimants, being duly sworn says: I am 39 years old; I am an engineer on board of sea-going vessels. I reside in New Jersey, New Bedford, Monmouth county. I was on board of the Alabama at the time of the collision. I was one of the engineers. Although it was not my watch at the time, I was in the engine-room, leaning on the throttle valve. Mr. Smith, the second assistant, was on duty, and

95 he wanted to go below to oil the lower part of the engine, and asked me to stand by until he came back. He started, and went below. I heard a person halloo, but did not hear what. Just as I heard the halloo the bell of the engine rung to slow, but before I had a chance to slow there was another bell on the top of that to unhook her; before I got her unhooked, two bells were rung to back. By that time Mr. Smith was in the engine-room. Mr. Smith shipped the bar as soon as he came in, and the engine had made a half a turn back when she fetched

up. These bells were all answered as promptly as they could be; they all came top of each other; there was no loss of time in Mr. Smith being out of the way at first, for if he had not been there, I should have answered the bells. I am third assistant, and understand handling the engine as well as he. I did not go out on deck after the collision until after the ship had got under way. I did not see either the tug-boat or the barque.

Cross-examined by Mr. Donohue:

I had been in the engine-room about fifteen minutes; I went down there to get warm; it was cool on deck.

Cross-examined for the libellants:

Mr. Smith was down oiling the engine two or three minutes. The engine runs without any handling, except when an order is given. I stopped the engine. That is all I did; what else was done was done by Mr. Smith. She was not reversed till Mr. Smith came and did it himself; all that there was time to do, from the first order, was to stop and make one half revolution back.

GEORGE W. WHITE.

Sworn to before me July 13th, 1866.
[L. S.] CHARLES D. INGERSOLL,
Notary Public, N. Y. City and County.

96 U. S. district court.

THE STEAMER ALABAMA, HER ENGINES, &C., the Coastwise Company, claimants, *ads.* NICHOLAS DE LAS CASAS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

PETER MADSEN, a witness produced and examined de bene esse on the part of the above claimants, deposes and says: I am thirty-one years old. I am a seafaring man. I have followed the sea between sixteen and seventeen years. When on shore I live at Hoboken. I have been upon steamers about four years. I was one of the quartermasters on the Alabama at the time of the collision with the Spanish barque. I had the wheel at the time. I took the wheel at five o'clock, at the time we left the dock. The pilot gave me the orders as to the course to steer. I followed his orders; he stood at the forward part of the pilot-house, on the hurricane-deck, very close to me—within hearing. I knew of the collision; before that I was heading south about; south was my direction, but the steamer may have varied a quarter point either way. The first order of the pilot, before the collision, was to port the helm. I put the helm to port. The next order was to steady the wheel; that is, to bring the helm to midship, or a little more, so as to hold her on her course. I obeyed the order to steady. The next order was to put the helm hard to starboard. This order was given by the pilot, who gave the other orders also. I put the helm to starboard. I got it hard over before the collision. John Pullin, another quartermaster, helped me to put it over. The collision occurred not a second after we got the wheel over. I heard the bells rung on our steamer. I heard one rung to slow, one to stop, and two to back; they were
97 rung one after the other, as quickly as possible; they were ru

at the time we were heaving the helm to starboard. I did not see the barque, but I saw the steam-tug. I saw her lights before the collision. I saw her lights some time before the order to starboard the helm. I saw them before the order to port. The lights bore about a point on our port bow. I think, if I am not mistaken, I saw all three of her lights, which were arranged in about a triangle; one red, one green, and one white; the white was the highest. I cannot tell how far she was off at that time. I heard a whistle from the steam-tug after she had crossed our bow. I saw her after she had crossed the bow. I don't remember how many blasts. I should think the steam-tug was about ahead when the pilot gave me the order to starboard. It was a dark night. I don't know how near we were running to the west shore.

Being cross-examined for the libellant:

No one told me to go to the wheel; I went there myself. I knew it was my duty to go there; it was my duty, because I was quartermaster, and nobody but a quartermaster steers the ship; it was my trick at the wheel; we generally shift about, and it was my turn. John Pullin, the other quartermaster, was stationed near to help me at the wheel; he was stationed at the wheel; he had been stationed at the wheel since five o'clock.

Q. Which of you two, you or John Pullin, was the one who really had charge of the wheel at the time?

A. It was I.

Q. What, then, had Pullin to do with the wheel?

A. He was put there to help heave the wheel whichever way the pilot wanted. We stood in the wheel-house at the wheel, he on the port side, I on the starboard, and he had done so since five o'clock. While leaving or coming into port, we always had two men at the wheel, the two quartermasters; this was so with the Alabama. John Pullin was gone from the wheel the best half the time after we got clear of the vessels at anchor. There was no one on deck but the pilot, John Pullin and
98 me, that I know of, except the mate; I think he was on deck. I don't know what the other men were doing, whether clearing up deck or getting their supper. I am sure I saw no one on deck except the pilot, mate, Pullin, and myself. I suppose you could see any one on the forward deck if you paid attention; I did not notice any one.

Q. Did you have a lookout?

A. The quartermaster was keeping a lookout; the one that was helping me at the wheel.

Q. What I want to know is whether any one was stationed on the lookout?

A. I could not tell; no one was to my knowledge.

Q. By what were you steering on that occasion, if not by the compass?

A. I could not tell what I could see ahead at that time; don't recollect. I was steering some by the light-houses and shore, and such things, and some by the compass; of course I had to keep my course. Our head was pointing a little outside the Staten Island fort. I was steering so as to keep about just the same distance off the shore, so as not to be any nearer the fort when we passed than we were from the shore. When I first saw the tug, I think I saw the three lights. I did not see them all the time from that; I did look at them again. I not see the hull of the tug at any time; only saw her lights. I can't tell how many seconds it was from the time I first saw the tug to the collision. The Alabama did not sheer any when I ported the wheel. Pullin did not
t can

help me port the wheel; he was outside the pilot-house then. The chief engineer was on deck, standing by the pilot. I did see the lights of the tug on our starboard bow.

Q. How many points on your starboard bow did the tug's lights bear the last time you saw them before the collision?

A. Perhaps five or six points.

Redirect:

The time that I so saw the steam-tug's lights on our starboard bow was after she had crossed the steamer's bows and just at the mo-
99 ment of collision. The Alabama was heading south at that time by compass; she had been heading that way some time; I cannot tell how many minutes. In steering, I look at the compass to get the direction, and then look at other objects as well as the compass. I am sure that the Alabama was heading south. Pullin did not help me put the helm to port; he was then outside the pilot house, on the lookout; he had been outside some time; can swear we had passed the vessels lying at anchor. When the wheel was ordered to starboard he jumped in *in* and helped me put it over. I cannot tell, but I think he rung the bells to slow and stop before he helped me to put the wheel to starboard. From the wheel where I stood, if I had paid attention, I think I could have seen a man down on the forward deck. I did not pay attention to see who was there.

PETER MADSEN.

Sworn to before me July 16th, 1866.

[L. S.] CHARLES D. INGERSOLL,
Notary Public, N. Y. City and County.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

GEORGE F. SMITH, a witness produced and examined de bene esse, being duly sworn, deposes and says: I am 2d assistant engineer. I am 37 years old, and reside in Brooklyn, at No. 569 De Kalb ave. I am a seafaring man. I was on board the Alabama as 2d assistant engineer at the time of the collision. I was in the engine-room. I had charge of the engine and had had charge of it ever since leaving port. The engine was in good order and condition, and was carrying, as near as I recollect, 15 or 16 pounds; she carries generally 17 pounds; she was not running at this time under full head of steam. I think we were carrying 15 or 16 pounds, as already stated.

The first order from the pilot-house was one bell; it was a little after six o'clock and just before the collision. There was one bell rung first, followed by another, and then by two in quick succession. The
100 first was to slow, the second to stop, and the other two to back. They all came together in quick succession. They were answered immediately. The engine was immediately slowed, stopped, and backed as quick as it could be done. We had got about half a turn back before the collision. Mr. White, the 3d assistant engineer, was in the engine-room with me. He slowed her, stopped her, and backed her. There was no delay in answering these orders, not the least.

GEORGE F. SMITH.

Sworn to before me, July 16th, 1866.

[L. S.] CHARLES D. INGERSOLL,
Notary Public, N. Y. City and County.

(Endorsed:) U. S. district court. The steamer Alabama, &c., ads. Nicholas de las Casas. Testimony of Peter Madsen and George F. Smith, for claimants Alabama. Owen, Grey & Owen, clts. procs.

Consent to examine witness de bene esse.

U. S. district court.

THE STEAMER ALABAMA, HER ENGINE, &c., }
ads.
NICHOLAS DE LAS CASAS. }

It is hereby consented that James A. Shafer be examined de bene esse in this cause as a witness on the part of the claimants, at the office of Owen, Gray & Owen, No. 72 Wall street, on Friday, the 20th day of July inst., at 12 o'clock at noon of that day; that the deposition of said witness, when sworn to before a commissioner of deeds or a notary public, may be read in evidence by either party on the trial, reference and other proceedings in this cause, with the like effect, subject to all exceptions to the competency and admissibility of the testimony, as if the same had been taken before a justice of the court, under an order issued for that purpose; that the same need not be filed unless required by ten days' written notice, but may remain in the possession of the claimants, a copy thereof being furnished to the libellants.

101

Dated New York, July 19th, 1866.

MAN & PARSONS,
Lib'lts Pros.

U. S. district court.

THE STEAMER ALABAMA, HER ENGINES, &c., }
the Coastwise Company claimants, &c., }
ads. }
NICHOLAS DE LAS CASAS. }

SOUTHERN DISTRICT OF NEW YORK, *ss:*

JAMES E. SHAFER, a witness produced and examined de bene esse on the part of the above claimants, being duly sworn, deposes and says: I am 37 years old, and reside in Connecticut. I am an engineer by profession. I was chief engineer on the Alabama at the time of the collision with the Spanish barque at the Narrows. I had been chief engineer for some months. I was not in the engine-room at the time of collision. About six o'clock I went up on the hurricane deck by the pilot-house. I saw there the pilot; he was walking backward and forward athwart ship in front of the pilot-house. I saw one of the quartermasters there also. he was outside of the pilot-house. A few minutes after I reached the hurricane-deck, by the pilot-house, I saw the tug-boat's lights. The pilot first called my attention to them. I saw the red, green, and white lights, the white light being the highest, and the three being somewhat in the form of a triangle. I saw no other lights. These lights were off on the port bow of the steamer, but I cannot state how many points. I cannot say certainly, but I should suppose the lights were then nearly two miles off; it might not have been so far as that.

102

The next I observed was that when close to the Alabama, the tug-boat sheered and crossed our bows from port to starboard; she was very close to us at that time. I heard no whistle from the tug-boat until after she had crossed our bows and had opened out on our starboard side; I then heard a whistle from her and a hail right away afterwards; I could not tell what was the hail. The pilot gave orders immediately after the hail to starboard the helm, and to stop and back the engine. I saw the quartermaster, who was on the outside, jump into the pilot-house, and he rung the bells to slow and stop, and then took hold of the wheel and helped to put it to starboard. I stepped immediately to the

bell-pull and rung the bells to back. The bells were rung as quickly and the same as if one man had rung them all.

As the tug-boat crossed the bows of the Alabama I noticed a vessel off on our port-bow. I saw no lights, and supposed she was lying at anchor. She was far enough off our bow to have allowed our steamer to have passed her, if she had been lying at anchor, by two or three of our ship's lengths off, if not more.

I knew that the engine was stopped before the collision, but the collision occurred a few seconds afterwards. I was in the pilot-house until the order was given to stop backing. During that time I noticed the barque, but I did not see any lights upon her. I heard no hail from the barque before the collision.

Being cross-examined for the libellant:

Q. What space is there between the forward part or flush of the hurricane deck and the front of the pilot-house on the hurricane-deck of the Alabama?

103 A. It is not over two feet at the narrowest part, which is front of the middle of the pilot-house.

The pilot kept walking backwards and forwards athwart the ship in front of the pilot-house till the order was given to starboard. He would stop long enough to take a look as he turned at each side. When I first went on deck I went into the pilot-house; remained there perhaps two or three minutes, perhaps five. I was in and out of the pilot-house two or three times before the order to starboard, and when I was out stood right by the door. I could not tell whether or not after I saw the tug's light the first order was to starboard. That is the first order I remember.

Q. How did the tug bear from the Alabama when she whistled?

A. She bore on our starboard bow; I can't tell how many points. The tug was very near abreast of our stem when she whistled, as near as I can judge from where I stood. I did not see the hull of the tug at any time; only her lights. I did not see all three of her lights all the time. The port light is the only one that went out of my sight. I can't swear that the vessel on which I did not see lights was the Spanish barque.

Q. How far off was the vessel you say you saw on your port bow when you first saw her?

A. It was in the night-time; as near as I can judge a couple of our lengths. We were 200 to 225 feet long or thereabouts. She bore one or two points off our port bow.

Q. How would you go to work to make the Alabama clear by two or three of her lengths a vessel only one or two points off her bow, and only about two lengths ahead, toward which the Alabama was going at her then rate of speed?

A. I mean by keeping right straight on, as she seemed. If we had kept straight on we would have cleared her by about two of our lengths if she had been at anchor; would have left her on our port side.

104 Q. Do vessels ordinarily anchor in the Narrows without lights?

A. I have seen them do so.

Q. repeated.

A. I can't say they make a general practice of it.

Q. repeated.

A. No, sir; they do not.

J. E. SHAFER.

Sworn to before me July 20, 1866.

[L. S.] CHARLES D. INGERSOLL,
Notary Public, N. Y. City and County.

(Endorsed:) U. S. district court. The Steamer Alabama, &c., ads. Nicholas de las Casas. Depositions of witnesses on part of Alabama, taken de bene esse. Owen, Gray & Owen, clts. proc'rs. Due service of a copy of within is hereby admitted, July 26, 1866. Man & Parsons, liblt's prs. Beebe, Dean & Donohue.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the 24th day of October, in the year of our Lord one thousand eight hundred and sixty-seven:

Present, the Hon. Samuel Blatchford, district judge.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA AND THE STEAM-tug Game Cock, their tackle, &c. } 19,356.

This case having been heard on the pleadings and proofs, and
105 argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellant recover in this action against the steamer Alabama and the steam-tug Game-Cock, their tackle &c., the damages by him sustained by reason of the collision in the pleadings mentioned, and that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and report thereon to this court with all convenient speed.

SAML. BLATCHFORD.

(Endorsed:) Vol. 19, No. 356. United States district court for the southern district of New York. Nicholas de las Casas vs. the Steamer Alabama and the Steam-tug Game Cock, their tackle, &c., Man & Parsons for libellant. Owen, Nash & Gray for Alabama. Beebe, Dean & Donohue. proctors for Game Cock. Interlocutory decree for libellant, and order of reference, &c.

Filed the 24th day of October, 1867.

U. S. district court.

NICHOLAS DE LAS CASAS
against
THE STEAMER ALABAMA, &C.

It is hereby stipulated, for the purposes of the reference herein, that on December 15, 1863, and for some days preceding and succeeding, the following were the values of Spanish doubloons and Spanish silver hard dollars in the city of New York, meaning the amount for which in the market they could be sold and necessary to be paid for them.

106

	In lawful money of the U. S. paper currency.	In coin.
Doubloons.....1.0	$23 44	$15 85
Silver dollars.....1	1 50	1 06

Dated January 14, 1870.

OWEN, NASH & GRAY,
Proctors for Alabama and Claimants.

(Endorsed:) U. S. district court. Nicholas de las Casas against the Steamer Alabama, &c. Stipulation. Man & Parsons, libllt.'s attys., 64 Wall street, N. Y.

Testimony on reference.

U. S. district court, southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMERS ALABAMA AND Game Cock.

DECEMBER 7, 1869.

Proctors for respective parties present, i. e., Man & Parsons for libellant, and Owen, Gray & Owen for the Alabama—no one appearing for the Game Cock.

Evidence for libellant.

Proctor of libellant offers in evidence the deposition of Miguel de las Casas, used on the trial; also deposition of Bartolomi Mathew, mate, used on the trial; also deposition of Edwardo Morales, marked "Exhibit A, J. A. O.;" deposition of Raphael Garcia, Exhibit B, J. A.
107 O.; deposition of Eloy T. Carmacho, Exhibit C, J. A. O.; deposition of John Peterson, Exhibit D, J. A. O.

MICHAEL, MARRON, sworn, says:

I am a native of Canary Islands; New York is my home; was last in the Canaries in the year 1861. I am ship-master by profession, and owner; have been such for about twenty-six years; have owned in three or four vessels during this time—first in coasting trade; latterly, sailed in the West Indies trades. I have been familiar since I went captain of vessel with transactions of buying and selling vessels. Dolner, Potter & Co. are my consignees in New York. I have seen the bark Ninfa, in question, at Havana; saw her twice there; saw her in 1862 first, and November, 1865. I went on board of her, and looked at her. I was lying alongside of her; went on deck and first part of the cabin, not all through her. The second time I went on her deck, not through her. I am acquainted with the kind of wood with which she is constructed; it is allowed to be the very best wood with which vessels are built; it is called teá.

Q. What, in your judgment, was the value of the Ninfa when you saw her in November, 1865, complete as she then was?

(Objected to, on the ground that he has not shown himself competent to testify on that subject; overruled.)

A. From what I saw of the vessel and her fixings I thought that the vessel could not be built in New York at that time for less than seventy thousand to seventy-five thousand dollars in currency. I should think that you could not buy a vessel like her here in New York for less than seventy thousand to seventy-five thousand dollars in currency. That is my judgment of her value at that time.

Q. What, in your judgment, was her value at the time of her loss, on or about December 15th, 1865, in New York, assuming her to have received ordinary wear and tear from the time you had last seen her?

(Objected to on the same grounds.)

A. I should think she would be worth very little difference, if any, in one month.

108 Cross-examined:

The last time I was on board three-quarters of an hour, only on

deck and between decks. She had been somewhat injured by a hurricane in the bow; did not go below to see if she was injured there or not. I' fixing her value, took in consideration her value in currency as it was at that time. I have owned in schooner Wm. C. Casper, schooner Winta Moyé, schooner Phoebe, and another schooner Phoebe, a new vessel; never owned in a barque of the size of this vessel Ninfa, only schooner. I did not know of any vessels that were bought or sold in November, 1865.

M. MARRON.

Subscribed and sworn to before me this 7th day of December, 1869.

JOHN A. OSBORN,
U. S. Com.

U. S. district court.

NICHOLAS DE LAS CASAS
vs.
THE STEAMSHIP ALABAMA, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

RICHARD POILLON, being duly sworn, deposes and says, as a witness for libellant:

I am of the firm of C. & R. Poillon, ship-builders, in the city of New York; have been in the business about thirty years, and have generally been extensively engaged at it; am familiar with the value of vessels, and with cost of building them; have been for, I should judge, twenty years. I have heard read the testimony in the deposition of Miguel de las Casas, and I have made an estimate of the value of such a
109 vessel, assuming her to have been three years of age in month of December, 1865, all complete, as stated by Casas. I know the wood of which she was constructed. My estimate of her value, at that time, is $105 per ton, carpenter's measurement, and by carpenter's measurement she would be 609 tons which makes $63,945.

Cross-examined by Mr. Bates:

The difference between Spanish and American measurement of a ton is in the feet. A Spanish foot is 11⅛ inches English.

Q. What would be the *the* costs in American measurement, assuming her to be 477 Spanish tons measurement?

A. I cannot answer that, as I am not accustomed to the Spanish mode of measurement. On the dimensions of the vessel, the American custom-house tonnage (new measurement) is presuming her to be of an ordinary model with the houses, as described by the captain's testimony. I think she will measure about 550 tons custom-house, (new measurement,) for a very sharp or extreme sharp vessel, with no houses on deck, there is a difference of about ⅓ between carpenter's measurement and the new custom-house measurement—the difference diminishing according as the vessel is built full. I estimate the $105 per ton for building the vessel in this port, in December, 1865—building and equipping, and coppering her, as described by the captain, in currency, as it stood at that time.

Redirect:

A vessel three years old, first-class, is not materially diminished from her cost of building; the depreciation would be principally in her copper, sails, and some of the rigging, upon the whole, from 8 to 10 per

cent. would cover the whole depreciation; a suit of copper, on a vessel in the trade in which she is in, would last from three to five years.

RICHARD POILLON.

Subscribed and sworn to before me this 15th day of December, A. D. 1869.

JOHN A. OSBORN,
U. S. Com.

110 The libellant offers in evidence the testimony taken on commission, of Mariano Cabrera Herandez, also of Nicholas de las Casas Lorenzo.

Reference adjourned to December 22d, 1869, at 3 p. m.

SAMUEL C. SHEPHERD, being duly sworn, testifies:

I am of the firm of James E. Ward & Co., ship-owners. Our vessels go to all parts of the world, more especially to the West Indies; have been in this business for fourteen years, as a principal; am well acquainted with the value of vessels, and have been during all that time. I have heard read the deposition of Captain de las Casas, describing the bark Ninfa; such a vessel, in New York, was, in December, 1865, worth from sixty-five to seventy thousand dollars.

Cross-examined:

I mean in United States legal currency, estimating its value at that time. I never saw the Ninfa; knew nothing of the value of vessels in the Canary Islands. I think the American measurement of a vessel of 477 tons Spanish would be about 620 tons; to get at it, in this case, I have taken her capacity—what I understand she could carry—and her dimensions. I do not know of any general rule for reducing Spanish to American tons; have made the calculation here on the facts given me, that she would carry 2,500 boxes sugar, and her dimensions, as read to me. There is a difference between Spanish and American measurement of the tonnage of vessels; under our present system it is about the same. Spanish vessels formerly ran smaller. The difference which formerly existed was due to the difference in the process of measuring. In December, 1865, it would have cost $110 a ton here in New York to build such a vessel ready for sea. I have based my calculation upon that estimate.

SAMUEL C. SHEPHERD.

Sworn to before me this 4th day of January, 1870.

JNO. O'KEEFFE,
Notary Public, City and County of New York.

The libellants offer in evidence the further testimony, taken on commission, and rest with a statement to be agreed upon.

111 District court of the United States for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMSHIP ALABAMA, &C.

Reference on damages.

SAMUEL H. PINE, being duly sworn on the part of the Alabama, testified:

I reside at Greenpoint, Long Island. I am a shipwright, doing busi-

ness at the corner of Avenue D and 11th street, in New York City. I have been engaged in that business about twenty-five years.

Q. What class of vessels have you generally built?

A. All vessels have been generally first-class. I have built all classes—brigs, barques, schooners, ships, and steamers.

Q. What range of tonnage?

A. From 35 to 6,000 tons.

Q. Have you built barques of about 400 to 600 tons?

A. I have.

Q. Are you acquainted with the cost of building barques in the port of New York for several years last?

A. Yes, sir.

Q. Do you know the value of such vessels in this port?

A. I think so. I do generally.

Q. Did you know the cost of building such vessels in December, 1865?

A. Yes, sir.

Q. Have you heard read the description of the Ninfa de los Mares as contained in the answer to the 3rd interrogatory directed to Mariano Cabrero Hernandez in his deposition taken on commission?

A. Yes, sir.

112 Q. What, in your opinion, would have been the cost of building such a vessel in New York in December, 1865, furnished complete, as there described?

A. $44,000, currency.

Q. What would such a vessel have been worth in New York at that time, three years of age, and having met ordinary usage?

A. I suppose about $35,000, currency.

Q. Do you know, and, if so, state what is the difference between a Spanish and an English foot?

A. One inch. A Spanish foot is eleven inches English, or very near it.

Q. What would be the American tonnage, new measurement, of the Ninfa, assuming that her Spanish measurement was 477 tons?

A. I can't tell very well about it.

Q. How many English feet in length would the Ninfa be if she was 123 Spanish feet long in her keel?

A. 113, about.

Q. What portion of the vessel is measured in length to estimate tonnage?

A. The keel, to measure carpenter's tonnage to build by.

Q. What would be the carpenter's measurement of such a vessel of her dimensions as given by Hernandez, above mentioned?

A. About 530 tons.

Being cross-examined by counsel for libellants, the witness testified:

Q. Did you hear read the whole of the answer of Hernandez to the third interrogatory?

A. I think I did, five or six pages.

Q. Do you understand all the terms used in it?

A. Not exactly. I can't say that I understand the whole of it.

Q. In giving an estimate of value, what have you assumed as the value per ton at that time?

A. About $90 per ton.

Q. Did you build any such vessel about that time?

113 A. I did, the brig Susan E. Voorhees, of about 500 tons, carpenter's. That was the only one. Begun her in December, 1865, and launched her in March, 1866.

Q. Is $90 a ton the highest price, by the ton, of which you have known for a barque?

A. Yes, sir.

Q. Do you know the wood and materials used in the Ninfa?

A. No, sir.

Q. Does not the value of such a vessel very much depend upon the quality of her materials?

A. Yes, sir.

Q. How much beyond $90 per ton could the cost of such a vessel have been increased by the quality of materials used?

A. You could, if you like, extend it to $200 per ton.

Q. What would be the fair range at that time, according to the quality of materials?

A. From $90 to $110 per ton.

Q. Have you learned in any way of materials—of what quality the Ninfa was constructed?

A. No, sir, the material I am not acquainted with.

Q. Do you consider your valuation of a vessel, or your estimate of her cost, of much value without your knowing or being informed as to the quality of her materials?

A. I can't say exactly. I can't tell you the value of that vessel, for I don't know what she was built of; to give my opinion of the value of a vessel, I want to know what she is built of.

Q. Have you learned enough of the Ninfa to give an opinion of her value?

A. No, sir.

Q. At whose request did you come here?

A. Mr. Steers.

On direct examination, the witness testified:

Q. What did you get for the brig you built in 1866?

(Objected to.)

A. $41,000.

Q. Would $44,000 have built an A No. 1 vessel at that time?

(Objected to.)

114 A. I think it would, of that size—530 tons.

Q. When you say that you could extend the cost of such a vessel to $200 per ton, would that imply an extraordinary outlay of work?

A. Yes, sir, and material too.

Q. Would $90 per ton build a first-class vessel of that size at that time?

(Objected to.)

A. Yes, sir.

Q. Would a vessel be more serviceable, or safer, or in fact better, with such an extra outlay upon her?

A. No, sir.

Recross-examined:

Q. Would not any extra outlay, however, in the way of material increase her cost?

A. It would.

Redirect:

Q. Would that extra outlay really increase her market value?

A. It would.

Q. Would a vessel sell for a great deal more in market that had such extra outlay?

A. Sometimes she might, at other times she would not.

S. H. PINE.

Sworn to before me this 10th day of February, 1870.

JOHN A. OSBORN,
U. S. Com.

U. S. district court.

NICHOLAS DE LAS CASAS
vs.
THE ALABAMA, &c.

HENRY STEERS, being sworn on the part of the claimants and the Alabama, testified:

I reside in New York City. My business is ship-building; have
115 been engaged in that business about twenty years. My ship-yard is located in Greenpoint, Brooklyn; am acquainted with the building of vessels in the port of New York, and have been so acquainted for several years past; am also acquainted with the value of vessels in this port. I have read the answers of the builder of the Ninfa as contained in the deposition of Mariano Cabrera Hernandez, in the commission issued to the Canary Islands. I understand the terms mentioned and used in that deposition as to dimensions, material, and construction of the bark Ninfa. I have studied and calculated those terms so that I can state the dimension and construction of that bark in the terms, dimensions, and measures known and in use here. A Spanish foot is $11\frac{3}{100}$ English inches. I have calculated what would be the tonnage of such a vessel in American carpenter's measurement; it would be about 500 tons—500 tons and a part of a ton; am acquainted with the wood of the tropical climates, substantially speaking. I know what it would have cost to have built such a vessel as the Ninfa in New York, in December, 1865, in the style of building vessels in New York; it would have cost from $75 to $85 per ton; that would have built a first-class vessel, such as are generally built here.

Assuming the Ninfa to have met with ordinary usage during the time she was sailing, she would have been worth in this port in December, 1865, $35,000 in currency, as it was then—I mean current money of the United States in all my testimony. In making my estimate of the value of such a vessel, I have assumed she would be built of white oak. It would have made difference in my estimate had the vessel been built of pine. Such a vessel built of pine would not have been worth within ten thousand dollars as much as she would have been built of oak. I would have considered such a vessel worth, built of pine, not over $25,000.

HENRY STEERS.

Subscribed and sworn to before me this 17th day of February, 1870.

JOHN A. OSBORN,
U. S. Com.

116 District court.

NICHOLAS DE LAS CASAS
vs.
THE ALABAMA.

March 4, 1870.

Cross-ex. of Henry Steers:

I am one of the stipulators for the Alabama in this case; am not

interested in her; am in the company which owns her. I build all styles of vessel, steamers and sailing-vessels. For the last few years I have built more steamers than sailing-vessels.

Q. On what authority do you state that a Spanish foot is $11\frac{3}{100}$ inches?

A. I state it on the authority of Haswell's book on civil engineering; don't now remember the name of any other book; examined Haswell's within a week.

Q. If the true equivalent were $11\frac{1}{8}$ English inches to the Spanish foot it would make the vessel larger, would it not?

A. It would.

Q. State the calculation by which, on the basis of $11\frac{3}{100}$ English inches to the Spanish foot, you calculate the Ninfa's tonnage at about 500 tons.

A. Multiply the length on the keel by the breadth, and that by half the breadth of beam, and divide by 95; that gives the number of tons.

Q. Do you mean, when you say that in that way you ascertain carpenter's measurement, that when you build a vessel at so much a ton, you in that way ascertain the number of tons?

A. I don't estimate on that basis.

Q. State the basis upon which, in that case, you do estimate.

117 A. On the kind and quality of the vessel I am to bid on. I have estimated the tonnage on the basis I have given, and I have done it in other ways.

Q. In obtaining the dimensions of the Ninfa, did you reduce the Spanish measurement contained in the deposition?

A. Yes, sir.

Q. What did you make the result?

A. Keel, $113\frac{9}{100}$ feet; breadth, $30\frac{34}{100}$; depth of hold, 17 1–100. These are all English feet.

Q. Where did you obtain the data upon which you obtained the feet?

A. I took it from Her'andez's statement of the number of Spanish feet. I do understand the millimiters perfectly. A millimeter is 0.393 of an English inch, according to the formula I used.

Q. What was the range by the ton for building barks of the Ninfa's size in New York in December, 1865?

A. From $70 to $80; it is ten or eleven years since I built a bark.

Q. Do you mean to say that barks were not built in New York, at about that time, up to $105 or $110 per ton?

A. I don't know of any.

Q. Did you know of any built about that time at any price?

A. I couldn't state within a month or two.

Q. Can you name any bark built under a hundred dollars a ton between October, 1865, and April, 1866?

A. Yes, I think I can; one built by Webb & Bell, alongside of my yard; know the price from what they told me; that is the only way in which I know.

Q. In your statement upon direct examination, have you assumed the Ninfa to be a first-class vessel?

A. I have; a first-class New York built vessel.

Q. How did you make out the estimate of $35,000 as the value of the Ninfa in December, 1865?

118 A. I assumed that she had depreciated 10 per per cent. That percentage is an average depreciation; the range would be from 5 to 15 per cent.

Q. Do you know the wood of which she was built?
A I know the wood which the deposition says she was built of.
Q. Do you mean the téa?
A. No.
Q. Do you know that wood?
A. No.

Redirect:

Q. If the true equivalent of a Spanish foot were $11\frac{1}{8}$ English inches, how much longer would that make the vessel?
A. 15 English inches.
Q. Have you prepared a statement in English dimensions of the size of the timbers of the Ninfa from the deposition of Hernandez?
A. I have; this is it.
Q. Is this a correct statement?
A. It is.
(Offered in evidence, marked "No. 1, March 3, 1870."

HENRY STEERS.

The Ninfas de los Mares.

Keel measured	$113\frac{9}{100}$	feet.
From stem to stern-post on deck	$124\frac{13}{100}$	"
Extreme breadth	$30\frac{34}{100}$	"
Depth of hold	$17\frac{1}{100}$	"
Her tonnage	500	tons.

Two decks with 40 beams each, one of them $11\frac{8}{10}$ inches wide and $7\frac{8}{100}$ inches deep, the crown in the beams to be with the natural grain of the wood.

Three clamp-strakes under each deck, to which the beams are bolted.

Ends of beams well secured by timber knees and water-ways; size of water-ways $12\frac{7}{10}$ inches deep and $10\frac{8}{10}$ inches wide.

Plank-sheer, forming full cover on water-way, $7\frac{8}{10}$ inches thick
119 and $18\frac{1}{10}$ inches wide; 5 strakes on deck on sides, bolted from bottom to top and from inside to outside, $5\frac{9}{10}$ inches thick and $4\frac{5}{10}$ in. wide; similar strake in middle of deck.

Keel, $18\frac{50}{100}$ in. deep, $11\frac{8}{10}$ in. wide, natural curves, $19\frac{6}{10}$ inches, bolted one with the other.

Two transoms, one $15\frac{7}{10}$ in., the other $14\frac{6}{10}$ in., square.

Stern formed of curved frames to stern-post, bolted in transoms and all massive, running near mizzen-mast, with large knees to fashion pieces, which bolt on inner transom.

Taffrail securely fastened to stern timbers.

The stern $14\frac{6}{10}$ inches, molded, $11\frac{8}{10}$ in., sided.

Over-stem or gripe, of a piece with stem, $7\frac{8}{10}$ inches, and knight-heads, eight breast-hooks, and furring, $1\frac{8}{10}$ inches.

Keelsons, of two pieces, $15\frac{7}{10}$ in. square, bolted in each.

Floor-timber from inside to outside.

Frames, double, worked square.

Plain or square frame, $7\frac{8}{10}$ in.

Diagonal or cant frames, $9\frac{8}{10}$ inches.

Space between frames, $7\frac{5}{10}$ inches.

Floor-planking, $3\frac{6}{10}$ inches thick.

Whale-planking, $4\frac{5}{10}$ inches thick.

Deck-planking, $4\frac{5}{10}$ inches thick.

Gunwale, $16\frac{6}{100}$ inches.
Treenail strakes, $10\frac{2}{10}$ in. wide, $3\frac{5}{10}$ thick, running from stem to stern, mortised and bolted and sheathed with fine metal.
Bulwark sheathing, $4\frac{5}{10}$ in. wide, $1\frac{8}{10}$ in. thick, of pitch-pine.
Top timbers, $6\frac{29}{100}$ in. square, 40 on each side.
Hatch-combings, $5\frac{1}{10}$ in. thick, $21\frac{2}{10}$ in height on upper deck, and $19\frac{6}{10}$ inches high on lower deck.
Stanchions, 5 inches wide and $7\frac{8}{100}$ in. thick.
Cat-heads, 2 pieces, $11\frac{8}{10}$ inches square.
Forecastle, $13\frac{79}{100}$ feet.

(Marked "No. 1, J. A. O. March 3d, 1870.")

120 United States district court.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C.

Samuel H. Pine, recalled by claimants, testified: I have made a careful computation of the tonnage of a vessel of the dimensions of the Ninfa, since my former testimony. I make the tonnage, American carpenters' measurement, of such a vessel, $499\frac{55}{95}$ tons. In estimating the value of such a vessel, I have assumed she was to be a first-class A No. 1 vessel, built of white oak. It would make a difference in my estimate if such a vessel was built of pine. Such a vessel would have been worth about $30,000 if she had been built of pine.

S. H. PINE.

Subscribed and sworn to before me this 17th day of Feb'y, 1870.
JOHN A. OSBORN,
U. S. Commr.

It is admitted that this witness took, as the basis of his calculation, the Spanish foot at 11 English inches.

U. S. district court.

THE STEAMER ALABAMA
vs.
NICHOLAS DE LAS CASAS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

MIGUEL DE LAS CASAS, a witness sworn and examined on the part of the claimants, through R. Hergues, an interpreter:

121 Was the master of the Ninfa at the time of her loss; do not speak the English language. The cabin commenced two feet back from the mainmast and ran aft. A passage-way was on each side of the cabin between the cabin and the bulwarks, between four and five feet wide on each side. Inside the cabin I could touch the beams with my hands; I could just about touch them. There was a kitchen and a bath-room on deck; there was a cabin forward on deck for sailors; it was not on deck, it was under deck. She was a clipper, medium; cannot say exactly, but her model as to sharpness was about the same as the Grand Canary; don't remember her draft of water when she left Havana to come here; don't remember her draft without cargo, nor empty; her

utmost draft was about 20 feet. She drew in ballast enough to go to sea safely in December—between 14 and 15 feet. Know the San Miguel; she was repaired by Mr. Poillon, in this port, in 1862; never knew a Canary Island built vessel called the St. Michele; the San Mjguel was here in 1861; don't remember whether she was here in 1862; she was repaired, I think, in 1862. The Ninfa never was docked after she was launched; she was not coppered before she was launched; she was coppered in 1862, at Havana, in a floating-dock there. I meant she never was docked here in New York.

Cross-examined:

The San Miguel was 30 years old when she was repaired by Poillon.

United States district court, southern district of New York.

NICHOLAS DE LAS CASAS
agst.
THE STEAMSHIP ALABAMA ET AL.

Deposition of Daniel N. Carrington, a witness produced, sworn, and examined on the part of the claimants of the steamship Ala-
122 bama, pursuant to the annexed stipulation, this 11th day of March, 1870.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

DANIEL N. CARRINGTON, being duly sworn, says that he resides in the town of Southold, Suffolk County, in the State of New York. I was president of the Coastwise Company, the claimants of the Alabama, at the time of the collision with the Ninfa. I have had thirty years' experience with shipping in the port of New York. I have had a general knowledge of the cost and value of vessels, and of the materials used in their construction. I have dealt in vessels—have bought and sold them, chartered and equipped them. I have read the testimony of the libellant, of Hernandez, the builder of the Ninfa, and that of Miguel de las Casas, the master, with care. I have a general knowledge of the wood used in ship-building; I have seen the Canary Island wood, and know what it is.

Q. Is the material which the libellant says in his deposition the Ninfa was built of, the best in the world for durability both in and out of water?

A. It is not; it is very inferior to many other woods used in ship-building.

Q. Was this vessel constructed in the strongest manner known to naval architecture, for her tonnage and occupation?

A. As described by her builder, she is constructed in a very inferior style of naval architecture, especially for her occupation.

Q. Is téa, by reason of the zone in which it vegetates, as strong as oak or stronger, especially out of the water and in contact with iron?

A. It is not.

Q. How does the "pino ateado" of the Canary Islands, of which the Ninfa was constructed, compare with the wood generally used in other countries in vessels of her size, and which would have the preference among nautical men?

123 A. The "pino ateado" is simply pine wood with a resinous property; it would compare very unfavorably with any other wood in ship-building.

Q. Would a vessel constructed as the Ninfa was last fifty years?

A. No, sir.

Q. What would be the probable life of such a vessel?

A. The ordinary life of that vessel, as first of her class, would be ten years.

Q. Were the building, fitting, and equipment of the Ninfa, as described, equal to vessels of her class built, fitted, and equipped in the United States?

A. The building was very inferior; the fitting was in bad taste; the equipment was good.

Q. Comparing the Ninfa, as described, with first-class vessels of American construction that you have seen, on which side would the advantage lay as to completion and taste?

A. Altogether in favor of almost any vessel I ever saw, except a Chinese junk; I will take back about the junk; at all events she was an inferior vessel to any American, British, French, or British Provinces vessel that I ever saw.

Q. What, in your judgment, was a fair value of the Ninfa, in currency of the United States, at New York, in December, 1865?

A. Not over $18,000, at the outside.

Being cross-examined, the witness testified:

Q. When last were you in the Canary Islands?

A. I was never in the Canary Islands.

Q. Give me the name of the vessel constructed of the Canary Island wood which you last saw, and when it was that you saw her.

A. I cannot remember the name nor the exact time; but in my business I have seen two or three Canary Island boats.

Q. When and where?

A. In the city of New York; I cannot tell when; I should think it was within fifteen years.

124 Q. State where such vessels were exactly when seen by you?

A. One I saw in the neighborhood of the Fulton Market; I can't tell as to the other.

Q. Can you give any data by which to identify these vessels which you say you saw?

A. I don't think of anything now.

Q. Did you go on board the vessel which you say lay near Fulton Market?

A. I did, on her deck; that was all.

Q. Do you consider that gave you an opportunity of judging reliably of the character of the wood of which her hull was constructed?

A. Not of her timbers.

Q. Did you see a Canary Island built vessel repaired by Mr. Poillon, a few years since?

A. I did not.

Q. When last did you own a brig?

A. I never owned a brig.

Q. When last did you buy or sell a sailing-vessel of or about the Ninfa's size?

A. I never bought or sold a vessel of her size.

Q. When last have you bought or sold a sailing-vessel of any size?

A. Never, personally.

Q. What vessel did you ever see constructed of the wood which you call téa?

A. I haven't called any wood téa.

Q. When last did you see any vessel constructed of the wood called téa, in the question put to you commencing, "is téa," &c.?

A. I see vessels every day constructed, in whole or in part, of the wood I mean in using the word téa.

Q. Is that wood which you mean Canary Island wood or a wood grown in the Canary Islands?

A. I don't know where it is grown, except that it is not grown in the Canary Islands.

Q. Have you ever been engaged in the business of the construction of vessels?

125 A. I have superintended the construction of vessels, and assisted in making designs and specifications.

Q. Question repeated.

A. The question isn't clear.

Q. By whom are vessels constructed?

A. By mechanics.

Q. Have you ever been such a mechanic?

A. No, sir.

Q. In what you answered in respect to "pino ateado," were you testifying from your knowledge?

A. I was.

Y. When and where did you see the "pino ateado?

A. On vessels here every day.

Q. Is the wood to which you apply that term a wood grown in the Canary Islands, so far as you have any knowledge?

A. It is, if you can believe the testimony of the owner or builder of the Ninfa.

Q. Question repeated.

A. It is.

Q. How do you know that the wood seen by you and called "pino ateado" by you was grown in the Canary Islands?

A. The question isn't clear. I haven't said that the wood I saw was grown in the Canary Islands.

Q. Do you mean to say that you have no knowledge that it was?

A. That what was?

Q. That the wood which you testify about as "pino ateado" was grown in the Canary Islands.

A. I mean to say that the "pino ateado" is grown in the Canary Islands and in other parts of the world.

Q. Question repeated.

A. The "pino ateado" is grown in the Canary Islands and in other parts of the world.

Q. Do you decline to make any other answer to my question?

A. I am ready to answer any question you put.

126 Q. Do you mean to say that you have no knowledge that the wood you testify about as "pino ateado," and as seen by you on vessels every day, was grown in the Canary Islands?

A. No; I have a knowledge about it.

Q. State, then, how you know that that wood so seen by you was grown in the Canary Islands.

A. I can say that it was the same kind of wood grown in the Canary Islands.

Q. Did you know of any purchases or sales of vessels of the size and character of the Ninfa in or about December, 1865?

A. I might have known; I don't remember at present any such.

Q. Had you such a knowledge of the prices of brigs of 500 to 600 tons, whether to build new or on a sale, being two or three years old, in or about December, 1865, as to give the range?

A. I can give the range. I had such a knowledge at that time.

Q. What was the range by the ton, carpenter's construction measurement, as you claim it to be?

A. That would require a calculation, and a reference to memoranda I haven't with me. I spoke of market value, not price per ton.

Q. What would be the range at that time, in your judgment, for a vessel of 500 tons?

A. From $9,000 to $30,000.

Q. State whether that answer applies to a vessel two or three years old or to a new vessel.

A. That answer applies to the market value of a vessel from two to five years old.

Q. Do you make no difference for that period?

A. The range of prices given by me includes any difference.

Q. State the range for a vessel three years old, of that size.

A. A New York built vessel, three years old, would be worth from $25,000 to $30,000. The range of all vessels three years old would be from $9,000 to $30,000.

127 Redirect:

Q. What is the meaning of the Spanish word téa?

A. Téa is a splinter or fragment of pine or any other resinous wood that, when lighted, burns like a torch.

Q. Do you know what is the general reputation in this port of Canary Island built vessels?

A. I do.

Q. What is that general reputation?

A. The general reputation is that they are built lightly, and of a wood like white pine, fir, and spruce.

Q. You say you never bought or sold sailing-vessels personally. Have you done so in any manner, and, if so, how?

A. I have bought sailing-vessels in an official capacity, but they were few. They were mostly chartered vessels. My business with sailing-vessels has been mostly with chartering them.

Q. Have you ever been engaged in ship-building; and, if so, how?

A. I have officially superintended several steamers.

Recross-examined:

Q. From what do you get the definition you gave of the word téa?

A. From Seaones, Newman & Barretti's Pronouncing Dictionary and from the Dictionary of the Academy of Madrid.

D. N. CARRINGTON.

Sworn to before me this 11th day of March, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

We consent that the foregoing deposition may be read in evidence by either party on the reference herein, and that the same need not be filed, but may remain in the possession of the proctors for the claimants of the Alabama.

Dated New York, March 11th, 1870.

OWEN, NASH & GRAY,
Proctors for Alabama.

(Endorsed:) U. S. district court. The Steamship Alabama et als. ads. Nicholas de las Casas. Deposition of Daniel N. Carrington. Owen, Nash & Gray, proctors for claimants.

128 U. S. district court.

THE STEAMSHIP ALABAMA
ads.
NICHOLAS DE LAS CASAS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

FREDERICK C. SCHMIDT, being duly sworn on the part of the claimants of the Alabama, testified:

I reside in New York; am a ship-broker; was brought up in the business; have been engaged in it 26 years; had knowledge of the value of barks in this port in December, 1865. I have heard read the deposition of Miguel de las Casas in regard to the description of the Ninfa de los Mares. The value of the Ninfa in this port in December, 1865, complete, would have been in the neighborhood of $22,000, presuming the vessel to have been in good order.

Cross-examination:

Q. What, in your judgment, was the range of value by the ton, carpenter's construction measurement, for barks 500 to 600 tons, in New York, in December, 1865, not over four years old?

A. From $40 to $55 per ton.

Q. Do you mean to say that $55 per ton would be the extreme of value for an American built first-class vessel?

A. Yes, sir.

Q. Do you know what it would cost to build such a vessel at that time?

A. I should say it would cost in the neighborhood of $80 per ton to build a first-class vessel.

Q. If the cost of building such a vessel at that time were considerably more that, say $100 a ton or over, would that affect your judgment of the value of a vessel at that time, three years old?

A. Certainly.

129 Q. Are you so sure of the cost of construction at that time as to say that $80 would be the limit?

A. That is a question I could not answer.

Q. Who would be most likely to know that, you or a ship-carpenter?

A. A ship-carpenter.

Q. In the estimate you gave of the value of the Ninfa, did you assume her to be of any particular tonnage?

A. I did.

Q. What?

A. In the neighborhood of 400 tons.

Q. Where did you get that from?

A. I heard a description read; it is the description from the deposition of Miguel de las Casas.

Q. Did you understand that to state her tonnage to be 400 tons?

A. I understood, from the description, that she was about 400 tons; I think it was stated in the deposition.

Q. Did you figure about 400 tons to be her tonnage from the measurements?

A. No, sir.

Q. Can you remember any transaction by way of purchase or sale of such a vessel in or about December, 1865?

A. Yes, sir.

Q. In the estimate given by you, did you make any deduction in view of the Ninfa's being under the Spanish flag?

A. I did.

Q. Did you notice the cabin accommodation of the Ninfa, as stated in the deposition?

A. Yes, sir.

Q. Did you add anything in respect of that?

A. I did.

Q. How much?

A. A couple of thousand dollars.

Q. Have you any knowledge of the wood of which the deposition states her to have been built?

A. I don't know anything about it.

130 Q. Does not the value of a vessel very much depend upon the kind of wood of which she is built?

A. It does.

Q. Do you consider that a person is a reliable judge of the value of a vessel who don't know anything about the wood of which she is built?

A. No.

Redirect:

Q. In your estimate of the value of the Ninfa, what class of vessel did you assume her to be?

A. A first-class vessel, built of good material.

Q. What purchase or sale of vessels do you recollect for December, 1865?

A. I only looked at one vessel.

Q. State that.

(Objected to by libellant's counsel.)

A. I remember the purchase of the bark Harvest Moon, in December, 1865, or January, 1866, about 400 tons, built in 1859, at Stockton, Maine, or Searsport. She was A 1½—a first-class vessel.

Q. What did she bring?

(Objected to by libellant's counsel.)

A. $19,000. That sale was here in New York; that was currency.

FRED'K C. SCHMIDT.

Sworn to before me this 30th day of March, 1870.

LYMAN W. BATES,
Notary Public.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

GUSTAVUS F. DICKMAN, being duly sworn as a witness on the part of the claimants of the Alabama, testified:

I reside in Brooklyn; am a ship-broker; have been between seven and eight years; had knowledge of sales of vessels in this port in February and March, 1865; don't remember any sales as late as December of that year.

Q. What sales do you recollect in February or March, 1865?

(Objected to.)

131 A. The bark General Cobb. I sold her February 3, 1865. Her tonnage was 543 old, 648 new. She was a good Maine built vessel, built at Bath in 1854.

Q. What did she bring?

(Objected to.)

A. She brought, with 237 tons of coal left on board, $26,500.

G. FRANK DICKMAN.

Sworn to before me this 30th day of March, 1870.

LYMAN W. BATES,
Notary Public.

U. S. district court.

THE STEAMSHIP ALABAMA, &C., *ads.* NICHOLAS DE LAS CASAS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

SAMUEL HARDING, a witness produced, sworn, and examined on the part of the claimants of the Alabama, testified: I reside in Brooklyn, New York. My present occupation is the agent of the "Bureau Veritas Register Internationale of Paris," and their surveyor in this port; it is sometimes styled the French Lloyds. I am surveyor for the purpose of giving vessels a class. I was familiar with the manner of constructing and material used in ship-building in this and other countries, and the market value of vessels in this port, in the winter of 1865 and 1866. I was a master of a vessel thirty-two years; have been the surveyor of the "Bureau Veritas" since July, 1863. I have examined the Grand Canary, built in the Canary Islands, and, I think, one or two other Canary Island built vessels, but I cannot recall them by name. They were constructed, so far as I saw, of a sort of pitch-pine, something like the hard pine
132 of the North; this is the kind of pine wood which grows in the Canary Islands; it is a little more fat than the northern pine; it is not the Georgia pine; it is very inferior to that; it is inferior to Georgia pitch-pine, or southern yellow pine, for ship-building purposes. The grade or class of a vessel built of the northern hard pine would not be higher than "A 1, third class." The construction of vessels built in the Canary Islands is very different from American vessels; the construction is very inferior. I have heard read the answer of Hernandez, the builder of the Ninfa, as contained in his deposition in answer to the 3d direct interrogatory. I have heard read some portions of the deposition of Las Casas, the owner of the Ninfa—those portions relating to the description and the materials. She is described therein as being principally built of pine wood. From their description therein contained, if she were new, and everything complete, I would probably give her a five-year rate in the "bureau veritas;" there is no lower rate than that for a new vessel. Assuming that she was three years old, and had met ordinary wear and tear, and was still sound, I would have continued her rate for three years from that time. From the testimony of the builder and owner as to size, material, and construction, and my knowledge of the market value of vessels in the winter of 1865 and 1866, the market value of such a vessel as the Ninfa was from thirty to forty dollars per ton; I mean registered tonnage, American new measurement.

SAML. HARDING,
Surveyor "Bureau Veritas."

Sworn to before me this 19th day of March, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

Cross-examined by libellant's counsel, on the 21st day of March, 1870, the witness testified:

I examined the Grand Canary while she was being repaired by Mr.

Poillon; am certain it was the Grand Canary; never was in the Canary Islands.

133 Q. Is what you have said in reference to the wood with which you think were constructed Canary Island built vessels you think you may have seen based upon your observation of the wood with which was constructed the Grand Canary?

A. Yes, sir.

Q. Is what you say in reference to the character of construction also based upon your observation of the Grand Canary?

A. Yes, sir; my answers have been given upon the Grand Canary in conjunction with the specifications I had read to me in answers to the third interrogatory directed to the persons named in my direct examination. I have applied what I saw of the Grand Canary to the information I obtained from those specifications.

Q. What was the range, in your judgment, for barques of 500 to 600 tons, three years old, in December, 1865, by the ton, carpenters' construction?

A. You could run all the way from $25 to between $80 or $90 per ton, currency.

Q. Does the cost of construction, in your judgment, bear upon the value of a vessel three years old?

A. It would.

Q. At what rate would you reduce from the construction cost of a perfectly first-class bark of 500 to 600 tons, carpenters' construction measurement, to get at her real value down to three years old?

A. I have always considered that a first-class vessel would depreciate about 5 per cent. per annum.

Q. Would that be so for the first three years?

A. It would.

Q. Is this depreciation dependent upon the quality of material?

A. It is.

Q. How long, in your judgment, should a vessel live, built of what you call first-class material?

A. The average age would be fifteen years; the extremes would be ten to twenty years ordinarily.

Redirect:

134 The depreciation on a third-class vessel would be 10 per cent. per annum for the first five or six years; the average life of a third-class vessel would be about eight years; the range of price of a third-class vessel of 500 to 600 tons, construction measurement, would be, for a Nova Scotia built vessel, three years old, in this market, from $25 to $35 per ton, currency. There is a difference of about $10 per ton between a vessel under a foreign flag and one under the American flag, in favor of the American vessel; the American vessel would bring that much more; that is, for the same class of vessels.

Cross-examined:

A Nova Scotia built vessel, the value of which I gave, would be worth in this market $10 a ton more if built in the State of Maine. When I value a vessel I value her at what I think she would bring at auction.

SAML. HARDING,
Surveyor "Bureau Veritas."

Sworn to before me this 21st day of March, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

U. S. district court.

THE STEAMSHIP ALABAMA, &c., *ads.* NICHOLAS DE LAS CASAS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

HENRY GAINES, a witness produced, sworn, and examined on the part of the claimants of the Alabama, testified: I reside in Hudson County, N. J.; am measurer of vessels for the United States; have been measurer of vessels for the Government since 1852.

Q. What is the basis of the American rule for finding the custom-house tonnage of vessels?

135 A. The basis is to find the cubic capacity of the vessel. When that is found in feet, divide by 100, and that brings it into tons. I know the Spanish rule for ascertaining the tonnage of vessels. First get the cubic capacity in feet; then divide the capacity by $41\frac{61}{776}$.

Q. A Spanish bark called the Ninfa de los Mares is 123 feet keel, 135 feet from stem to stern-post, 33 feet extreme breath, and $18\frac{1}{2}$ feet depth of hold—all Spanish feet. Will you please make a computation of her tonnage in American custom-house measurement, assuming her to be a medium clipper?

A. I have made the calculation. She will measure under deck $304\frac{16}{100}$ tons. It is the rule here to measure cabins and houses on deck.

Q. Assuming that this vessel had a cabin on deck $52\frac{1}{2}$ feet long, 19 feet in breadth, and 7 feet high, in English feet, what would be the tonnage of that cabin in American custom-house measurement?

A. $69\frac{79}{100}$ tons.

Q. What would the total tonnage of the vessel be?

A. $373\frac{95}{100}$ tons.

Cross-examined:

Q. Whence do you derive this method, which you state is the Spanish method of ascertaining tonnage?

A. From a book called the "Encyclopediæ of Commerce," published by Harpers in 1858.

Q. State the measurement in English feet, used by you in the calculation of custom-house tonnage, to which you testify?

A. Her length $127\frac{7}{12}$ feet, breadth of beam 31 feet, less 3 feet, to reduce to the inside width; depth of hold $17\frac{4}{12}$ feet.

Q. Is the reduction of Spanish feet to English feet made by you at an exact rate?

A. It is correct in the main. There may be small fractions left out. I consider it exact.

Q. Is it exact?

A. It is exact, less clerical errors.

136 Q. Have you made any clerical errors?

A. I don't know whether I have. I don't think I have. I have not intentionally. To the best of my knowledge and belief it is correct.

Q. At how many English inches have you estimated the Spanish foot?

A. $11\frac{128}{1000}$. I take 135 Spanish feet, the length on deck, to compte from.

HENRY GAINES.

Sworn to before me this 23d day of March, 1871.

EDWARD L. OWEN,
U. S. Commissioner.

U. S. district court.

THE STEAMSHIP ALABAMA, &C., *ads.* NICHOLAS DE LAS CASAS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

THOMAS D. TAYLOR, being duly sworn on the part on the claimants of the Alabama, testified:

I reside in Brooklyn; am a marine inspector for the American Lloyd's Universal; have been in that business since 1857. The nature of the business is the publication of shipping, and the classification of vessels for the purposes of insurance, based upon an actual inspection of vessels. I have been in the Canary Islands once—over thirty years ago. I have seen several vessels built there, in the port of New York, within the last 20 years, which is the time I have been engaged in the business of inspecting vessels. Canary Island built vessels are not equal in construction and material to a first-class New York built vessel; they come the nearest in material and construction to a Windsor or Nova Scotia
137 built vessel. I think they would be about on a par with them.

I read the description of a vessel called the Ninfa de los Mares from the deposition of Hernandez, her builder, and Las Casas, her owner. That description corresponds very nearly to the Canary Island vessels I have seen. I rated the Grand Canary in 1865. I examined her here in New York.

Q. Do you have knowledge of the market value of vessels of her class in this port in the winter 1865 and 1866?

A. That would be matter of conjecture. I have knowledge of the market value of vessels generally at that time.

Q. What would a Nova Scotia bark, of the description of the Ninfa, three years old, and having met ordinary wear and tear, have been worth by the ton here at that time?

A. About 40 dollars a ton, gold. According to the description of the Ninfa, a good deal of expense was put upon her cabin arrangements and general outfit. I would place that at $5,000 additional; that is, over and above what I would allow ordinary vessels.

We used to get fine wood at the Canary Islands, which the natives called téa. It is a pine wood; a small wood made up in bundles.

Cross-examined:

I publish a book called the American Lloyds' Universal. I am fifty-five years old.

Q. Give the name of any Canary Island built vessels you can recollect to have seen in New York.

A. The Grand Canary, a ship; a brig repaired by Mr Poillon, called the San Miguel. There was another vessel that I saw, but I cannot recollect her name.

Q. Up to how much a ton could the quality of the materials increase the valuation given by you, in your judgment?

A. If the material was the best of everything, up to $75 or $80 currency.

138 Q. Was not the general outfit and the work on the cabins of the Ninfa, according to the description, of an unusually costly character?

A. I judge so.

Q. What was the size of the wood spoken of by you as called téa?

A. About the size of the wrist.

Q. Can you tell by the description in the depositions whether that is the wood there called téa?

A. I cannot tell.

Redirect:

Q. What wood is mentioned in those depositions?

A. They mention pine, I believe.

THOS. D. TAYLOR.

Sworn to before me this 23d day of March, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

U. S. district court.

THE STEAMSHIP ALABAMA ET AL.
ads.
NICHOLAS DE LAS CASAS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

VERNON H. BROWN, being duly sworn, testified on behalf of the claimants of the Alabama:

I reside at Yonkers; am ship-broker in New York; am accustomed to buying and selling vessels; have been about eighteen years; know of the sale of the bark called the Pursuit in this city in September, 1865; she was sold at auction some short time previous to that by the United States Government, at or about $18,000. (The testimony as to the sale of the Pursuit objected to.) She was specially appraised at or about that sum. I examined her myself; she was a strictly first-class
139 Baltimore built vessel. Baltimore has always stood as high as a ship-building port as any port in the United States. Her old tonnage was about 610 tons; her new measurement was a little under 500 tons. I afterwards sold this vessel in September, 1865; she was sold to New Bedford parties for a whaler. She brought at that sale either $23,500 or $24,000; not over the latter sum. I think that was her full value. She was particularly adapted for a whaler, and I think she brought an extreme price.

I have seen two or three Canary Island built vessels in this port. I saw the Grand Canaries when she was here. As a class, these vessels are not very generally known. My impression of them is that they are built of soft or mixed wood, which is not so durable as our first-class built vessels built here would be.

In December, 1865, a vessel under the Spanish flag would not sell as readily as an American vessel. A vessel under a foreign flag cannot be held by an American citizen.

Cross-examination:

The Pursuit, when she was sold at auction, was about eight years old. My impression is she had been used by the Government about two years. She had been used by the Government. Government sold, from time to

time after the war, the vessels they had used during the war; sold them mostly at auction.

Redirect:

The Pursuit was sound. We bored her through and through to examine her.

VERNON H. BROWN.

Sworn to before me March 17th, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

140 U. S. district court.

THE STEAMER ALABAMA, &c., *ads.* NICHOLAS DE LAS CASAS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

JOHN W. CARRINGTON, a witness on the part of the Alabama, being duly sworn, testified:

I reside in Brooklyn; am manager of West India and Brazil Express Company. I understand the Spanish language. I first acquired a knowledge of that language as a student in the New York University, and afterwards in Cuba, in the Spanish service. The Spanish is the language of the Canary Islands.

Q. Please read in the testimony of Capt. Las Casas, that part stating the kind of wood of which the Ninfa de los Mares was built, and say if the wood used is a Spanish wood; and if it is, what kind of wood is it?

A. It is a Spanish wood, and is a kind of pine. The word means a resinous pine.

Q. What is the meaning of the Spanish words "pino ateado?"

A. I should Anglicise it by calling it a pine with some resin in it.

Q. Is there an exact equivalent in the Spanish language for the words "pitch-pine?"

A. No, sir; none that I know of at all.

Cross-examined:

Q. Whence do you derive your knowledge of the English equivalent stated by you for the Spanish words mentioned on your direct examination?

A. From general education in the language; partly from books and partly from general familiarity. I was never in the Canary Islands. In so far as the Canary Islands are concerned, I have no knowledge from observation of the kinds of wood designated by the terms mentioned.

141 Re-direct:

I have met natives of the Canary Islands, and had them under my orders.

JOHN W. CARRINGTON.

Sworn to before me this 19th day of March, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

U. S. district court.

THE STEAMER ALABAMA
ads.
NICHOLAS DE LAS CASAS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

MICHAEL MORROW, being duly sworn, says: I have been examined before in this matter as a witness on the part of the libellants. I live at Flushing, Long Island. I am a native of the Canary Islands. The tea of which the Ninfa was constructed is a species of pitch-pine called in the Canary Islands tea. It is not like the pine of this country; it is very hard wood, and you can't plane it like you can pine in this country.

Cross-examined:

It is very durable wood, in the water and out.

Redirect:

Q. Which of the specimens now shown you is the nearest to the tea?
A. This is the nearest, but not the grain. Same is marked "J. E. P. and E. L. O., April 1, 1870."

Recross:

Q. Is the sample shown you as good a wood for ship-building:
A. It is as good as the tea in the pitch, but not as good in the grain. It does not split as easy as this.

M. MORROW.

Subscribed and sworn to April 1, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

142 NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C., AND THE TUG-BOAT GAME COCK.

JUNE 22D, 1870.

Proctors for respective parties present, and sum up the case on the evidence.

Mr. Parsons opens and states what he claims.

Mr. Bates, for Alabama, argues in opposition.

(Endorsed:) Nicholas de las Casas vs. The Steamer Alabama and the Tug-boat Game-Cock, &c. Testimony on reference.

U. S. district court.

NICHOLAS DE LAS CASAS
agst.
THE STEAMER ALABAMA, &C.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

EDWARDO MORALES, being duly sworn and examined as a witness for the libellant, through Wm. B. Goff, duly sworn as interpreter, testifies:

I reside in Santa Cruz, Island of La Palma. I am 42 years of age; am captain of the bark Bella Palmera, and am graduated as a pilot from the government nautical college at Teneriffe. I knew the Ninfa perfectly well from the time she was being built; saw her keel laid, and saw her during her whole construction. I am familiar with the value of vessels thoroughly; have assisted in the construction of several, and been part owner of two or three besides the Bella Palmera. The Ninfa was worth forty to forty-five thousand dollars, gold, and could
143 not have been built for less in the Canary Islands. I have had vessels repaired and overhauled here. Have here now new coppered and keel, new mast, bowsprit put in my vessel here. The cost of ship carpentering and building is much less in the Canaries than here. I have frequently asked ship-builders the prices of vessels here, and heard them state.

Q. What, in your judgment, was the value here of the Ninfa at the time of her loss?

A. The Ninfa was almost a new vessel; had had $4,000 or $5,000 spent on her after she was built; was a splendid vessel; fitted up for passengers. I can scarcely give her value in gold at that time, as I don't remember the rate, and was not here. She would be worth here to-day $55,000 to $60,000 currency.

Cross-examined for the Alabama:

The Ninfa was built in 1862, and I saw her constantly afterwards when in port, until she was lost. I saw her both at La Palma and at the ports where they both sailed. I never heard of any collision between her and the English steamer Sidney Hall. I have heard of a collision between her and the Spanish brig Ampeso, which occurred in the harbor of Santa Cruz. It was not a collision, but the Ampeso dragged her anchor, and came against the Ninfa without doing any damage. I was there and went on board. I don't know of any collision between her and the French ship Emilia Perrera. I know there was a hurricane, but I was not there at the time. I don't know that the Ninfa received any damage at that time. I have never sold, in the port of New York, a vessel built in the Canary Islands, nor have I ever bought a vessel in this port built there. I do not know of any purchase or sale of such vessels in this port. I give the value of the Ninfa in this port from my comparison with American vessels of a similar size. I have never bought or sold American vessels of the size of the Ninfa in this port, nor of any size. I saw the Ninfa just before she left La Palma on her last voyage. I don't know positively why she was coming to New
144 York, but I heard she was coming to load for the Canary Islands. I did not hear that she came to New York to be overhauled or repaired. I did not hear that she leaked in her bows.

Redirect:

Q. How did the Ninfa, as to material and build, compare with American vessels?

(Objected to.)

A. Her timber was the best in the world. No American vessel will stand what Canary vessels do. She would compare favorably with the best built in the United States.

EDWARDO MORALES.
W. B. GOFF.

Sworn to before me this 18th day of September, 1867, by the said Edwardo Morales, the said W. B. Goff having been duly sworn interpreter.

U. S. district court.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, &C.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

RAFAEL GARCIA, being duly sworn and examined for libellant, through Wm. B. Goff, duly sworn as interpreter, testifies:

I reside at Las Palmas, Grand Canaries. I am 35 years old; am captain of the brig Louisa, of Las Palmas; own my vessel, I and my father. I knew the Ninfa from the time of her first voyage, when I saw her on the dry dock at Havana, being sheathed and coppered. I know the value of vessels, because I kept all the accounts of my vessel, and of several others my father built. I have never made a sale or purchase myself, but have known of several. The Ninfa was worth more when she was lost than when launched. Much ornamental work had been put
145 on her. She was, beyond a question, worth over $40,000, gold. Her cabins were splendid. I have had small repairs done on vessels here; no extensive job. The prices are much greater here than in the Canaries. The Ninfa was constructed with great solidity, and was a very handsome vessel, and could not have been bought in the United States for less than 60 or $70,000, as I am convinced from inquiries made here, and form my ideas from prices charged me when I wanted the rig of my vessel changed.

Cross-examined:

I have known of the purchase and sale of vessels in the Canary Islands and Havana; I have never known of the purchase or sale of a vessel in New York. I have asked the price of several vessels here, and I have fixed the value of the Ninfa by comparing what was asked for them and their outfit with her. These were American vessels. I cannot give the name of any of the vessels As I had no idea of buying them, I paid no attention to the name.

RAFAEL GARCIA.
W. B. GOFF.

Sworn to before me this 18th day of September, 1867, by the said Rafael Garcia, the said Wm. B. Goff having been duly sworn as interpreter.

The foregoing depositions of Edward Morales and Rafael Garcia may be read on the trial of the above-entitled suit, with like effect as if regularly taken de bene esse before a commissioner, and subject to all legal objections.

New York.

OWEN, GRAY & OWEN,
Proctors for the Alabama.
BEEBE, DEAN & DONOHUE,
For Game Cock.

(Endorsed:) United States district court. Nicholas de las Casas vs. The Steamer Alabama and the Tug-boat Game Cock. Deposition of Edwardo Morales and Rafael Garcia, (de bene esse.)

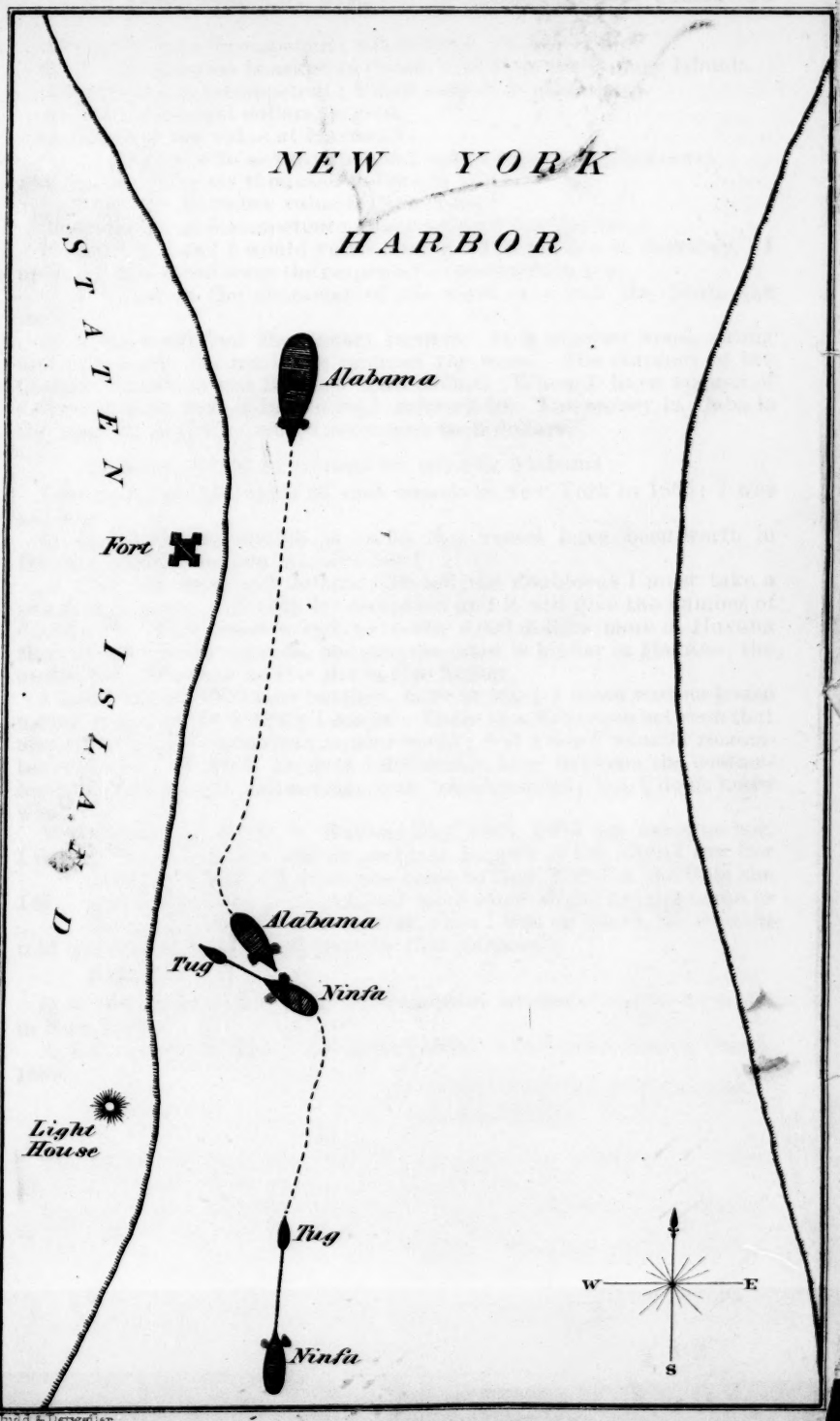
146 UNITED STATES OF AMERICA,
Southern District of New York
City, County, and State of New York, ss:

Be it remembered that on this 30th day of November, in the year of our Lord one thousand eight hundred and sixty-nine, I, Edward L. Owen, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States,'" passed March 1, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at the office of Man & Parsons, No. 64 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Eloy F. Camacho, to testify and the truth to say on the part and behalf of the libellants, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern district of New York, at New York, wherein Nicholas de las Cases is libellant, against the Steamer Alabama, her engines, &c., and the Steam-tug Game Cock, her engines, &c.

And thereupon, the said ELOY F. CAMACHO, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Eloy F. Camacho, and he did thereupon depose, testify, and say as follows, viz:

I am 44 years of age. (The said witness being examined by me through Angel de Lono as interpreter, and he being first duly
147 sworn to well and truly interpret from English into Spanish the questions that may be put the said witness, and from Spanish into English the answers that may be given by him.) I am a native of the Canary Islands, and only speak the Spanish language. My present residence is the city of New York. I expect to leave here for Nassau, N. P., by the steamer of next Thursday. I am, by occupation, captain of vessels, and have been so since 1850—in command of Spanish vessels. I have been employed in Havana, in buying vessels, from 1860 until lately, and at present I am employed in the same thing here in New York, and have been since the month of April. In October of 1868 I left the Canary Islands for St. Thomas, and down to that time my home was there. In 1863 I saw the bark Ninfa de los Mares near the floating dock in the Havana Bay, and two years afterwards I saw her the second time in Havana. I examined her the first time I saw her. I went all through her. I was commissioned to buy her. I have been acquainted with the value of vessels of that description in the Canaries, at Havana and New York for the last ten years. I have owned interests in vessels myself. I am acquainted with the description of wood of which the Ninfa was made. When I last saw the Ninfa she was coppered.

Q. 1. Assuming the Ninfa to have had ordinary wear and tear from the time you last saw her down to December, 1865, what was then her value in the Canary Islands, in Havana, and in New York?



Judd & Detweiler.

(Objected to as incompetent; taken subject to objection.)

Q. 2. The question is asked in detail, first as to the Canary Islands.

(Objected to as incompetent; taken subject to objection.)

A. Fifty thousand dollars, in gold.

Q. 3. As to her value at Havana?

(Objected to as incompetent; taken subject to objection.)

148 A. Fifty-six thousand dollars in gold.

Q. 4. As to her value in New York?

(Objected to as incompetent; taken subject to objection.)

A. Such a vessel I would value here at $110 per ton in currency. I mean an American ton—the carpenter's construction ton.

Q. 5. What is the character of the wood of which the Ninfa was built?

A. With wood from the Canary Islands. It is superior wood, strong and very hard; the téa is the name of the wood. The currency of the Canary Islands is the Spanish hard dollar. When I have spoken of dollars in gold, that is the dollar I referred to. The money in Cuba is the Spanish doubloon, worth seventeen such dollars.

Cross-examined by counsel for steamer Alabama:

I do not know the value of such vessels in New York in 1865; I was not here.

Q. 6. How many doubloons would this vessel have been worth in Havana at the time you last saw her?

A. Fifty-six thousand dollars. To tell the doubloons I must take a pencil and paper. Divide by seventeen and it will give the number of doubloons. This vessel would be worth 6,000 dollars more in Havana than at the Canary Islands, because the labor is higher in Havana; the *conduction* of lumber to Havana is also higher.

I think she was 500 tons burthen, more or less; I mean custom-house measurement at the Canary Islands. There is a difference between that measurement and American measurement; but I don't exactly remember what it is. I think there is a difference here between the custom-house measurement and construction measurement; but I don't know what it is.

When I saw the Ninfa, in Havana Bay, 1865, I did not examine her. I did not know that she had an accident happen to her after I saw her in Havana Bay. I know she came to New York, at the time she
149 was lost, to get a freight and have some slight repairs made to the cabin. I know this because, when I was on board, the captain told me that he was coming here for that purpose.

Redirect:

Q. 7. When prior and when subsequent to December, 1865, were you in New York?

A. I never was in New York before 1865. I first came here in April, 1869.

ELOY FELIPE CAMACHO.
A. DE LONO

The witness desires to correct that portion of his testimony in which he refers to the "slight repairs made to the cabin."

I meant that the only thing the cabin needed was a new carpet, and the vessel came to New York to get freight.

ELOY FELIPE CAMACHO.
A. DE LONO.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he is bound on a voyage to sea.

150 I further certify that due notification of the time and place of taking the deposition signed by me, was made out and served on the adverse parties, the proctors for the steamer Alabama and steam-tug Game Cock, to be present at the taking of the deposition, and to put interrogatories, if he or they think fit; and that on the 30th day of November, in the year of our Lord one thousand eight hundred and sixty-nine, I was attended by proctor for libellants, and the proctor for the steamer Alabama, and by the witness, who was of sound mind and lawful age; and the witness was, through the interpreter, by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statements, and after carefully reading the same to the witness, he subscribing the same in my presence, the interpreter also subscribed the said deposition. I have delivered the same to the proctors for the libellant, pursuant to a stipulation in that behalf.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this 30th day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

[L. S.] EDWARD L. OWEN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

(Endorsed:) U. S. district court. Nicholas de las Casas vs. the Steamer Alabama and Steam-tug Game Cock, their engines, &c. The deposition of Eloy F. Camacho, on part of libellant, taken on the 30th of November, 1869, before me, Edward L. Owen, U. S. commissioner. We consent that the proctors for the libellant may retain the written deposition in their possession, and that the same need not be filed, unless requested by the proctors for claimants. Dated Nov. 30th, 1869. Owen, Nash & Gray, proctors for resp'ts.

151 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this first day of November, in the year of our Lord one thousand eight hundred and sixty-nine, I, Edward L. Owen, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and caused to be and personally appear before me, at my office, at No. 72 Wall street, in the city of New York, in the southern district of New York, in the State aforesaid, John Peterson, to testify and the truth to say, on the part and behalf of the libellants, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern district of New York, at New York, wherein Nicholas de las Casas is libellant, against the Steamer Alabama, her engines, tackle, &c., and the Steam-tug Game Cock, her engines, tackle, &c.

And thereupon the said JOHN PETERSON, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said John Peterson, and he did thereupon depose, testify, and say as follows, viz:

I am 44 years of age. I reside in Burlington, New Jersey. I was born in Sweden, but am a naturalized citizen of the United States, where I have lived 32 years. I am a shipmaster by profession, and have been for the last 18 years in command of vessels sailing out of the port
152 of New York. I am part owner in one vessel at the present time. I have been a part owner in about 8 or 9, I should think. I am acquainted with the cost of vessels to build. I have built myself. I know the prices vessels bring in the United States, when they are bought and sold, and my knowledge only extends to prices in the United States. I know the Ninfa de los Mares by seeing her in the port of Cardenas, Cuba. I only remember to have seen her once, and that was the time in Cardenas when I went aboard her. I went all through her. I don't recollect the time, but I think it was about four years ago, and during the summer-time; my log-book will give the date; I will furnish it. (The witness says the date is Thursday, July 21, 1864.)

Q. 1. What, in your opinion, was the value of the Ninfa in the United States at the time you saw her?

(Objected to on the ground that the witness has not shown himself competent to testify in this respect; taken subject to objection.)

A. With all her tackle, furniture, utensils, &c., I should say 56,000 dollars, United States currency. I noticed that she was a hard-wood vessel. I have been acquainted with vessels built of the hard woods of the tropics and of warm climates for the past 18 years. I have seen, but never examined, several other vessels built in the Canary Islands. I know the reputation of others, and of the wood of those islands for ship-building purposes; any hard wood from the tropics is always considered among sailors as the best wood for ship-building purposes. The

first time I bought into a vessel was in 1854, and since that time I have been familiar with the cost of building and the price brought by vessels in the United States.

Q. 2. Assuming the Ninfa in December, 1865, to have been in substantially the same condition in which she was when you saw her at Cardenas, what, in your judgment, was then her value at New York?

(Objected to on the same ground as before; taken subject to objection.)

153 I don't see that I could deviate much from my price before stated. If she was in the same condition she would be worth the amount I have stated.

Cross-examined on the part of the Alabama:

I now own in the bark Elba. Her tonnage is 424 tons or thereabouts. She was built at Pembroke, State of Maine. It cost about $32,000 to build her. She is soft wood all through; her timbers are birch. I call that soft wood. The treenails are oak. She was built about five years ago. When I refastened her, which was about three years ago, I changed the treenail from oak to locust. I paid $9,000 for refastening her; this was exclusive of the $32,000 originally paid for her. I don't know anything about the cost of building vessels in the Canary Islands. I never was aboard the Ninfa but once, which was on the time mentioned in my direct examination. I was aboard her about two hours; it might be more and it might be less. I merely examined her out of curiosity; I had no idea of buying her. I examined the rigging. I merely looked at it as one captain would examine another captain's vessel, to see the differences in ship-building; I did not examine it as I would if I had been going to buy. I don't know whether she had the usual quantity of spare sails, spars, &c., on board. I went down between decks, but did not go into the cabin. I was a stranger; I was buying lace of the sailors. I did not see the captain; I never saw him before a few days ago. You cannot get a vessel built like her in the port of New York, complete for sea, less than $100 a ton. I mean custom-house ton, new measurement, which I understand to be the same thing as carpenter's measurement.

Redirect:

In giving my judgment of her value, I have assumed certain dimensions, but whether they were correct or not is mere guess-work. I judged the length of the deck to be 136 feet, English measurement; breadth, 32 or 32½ feet, same measurement; and the depth from 17 feet 9 inches to 18 feet, more or less. All these dimensions are English feet.

154 Recross-examination:

I can't tell exactly the difference between English and Spanish feet, but the Spanish foot is a little the largest; forty yards English make thirty-two yards Spanish. Her value in the Canary Islands I know nothing about.

JOHN PETERSON.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed February 20, 1812,

and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1, 1817, and the act entitled *an* "An act to establish the judicial courts of the United States," passed September 24, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named; that the same was taken pursuant to a stipulation signed on the part of the libellants and the claimants the steamer Alabama.

I further certify that no notification of the time and place of taking the said deposition signed by me was made out and served on the adverse party, or his attorney, to be present at the taking of the deposition and to put interrogatories, if he or they might think fit, for the reason that the same was taken pursuant to a stipulation in possession of the libellants, and that on the first day of November, in the year of our Lord one thousand eight hundred and sixty-nine, I was attended by counsel for respective parties and by the witness, who was of sound mind and of lawful age, and the witness was by me first carefully examined and cautioned. and sworn to testify the truth, the whole
155 truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence.

And I do further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this 1st day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fo urth.

EDWARD L. OWEN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

Floyd P. Laremuth, esq., U. S. consul at the port of Santa Cruz de la Palma, in the Canary Islands, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority, diligently to examine upon their corporal oaths or affirmations, before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, Cayetano Felipe Cardenas, Mariana Cabera Hernandez, José Aña Rodriguez Gonzalez, Ygnacio Rodriguez, José Buenamnerta Gonzalez, José Mendoza Morales, José Miguel de las Casas, and Nicholas de las Casas, as witnesses on the part of the libellant in a certain cause now pending undetermined in the district court of the United States of America for the southern district of New York, wherein Nicholas de las Casas is libellant, vs. the Steamship Alabama, her tackle, &c., and the Steam Tug-boat Game Cock, her tackle, &c., are respondents and claimants.

156 And we do further empower you, as such commissioner, to examine, on the same behalf and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you, as such commissioner, before whom such testimony may

be taken, to reduce the same to writing, and to close it up under your hand and seal, directed to Man & Parsons, esqs., counsellors at law, No. 64 Wall street, at the city of New York, as soon as may be convenient after the execution of this commission; and that you return the same when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York, at the city of New York, this twentieth day of November, in the year of our Lord one thousand eight hundred and sixty-seven, and of our Independence the ninety-second.

[L. S.]

GEO. F. BETTS,
Clerk of the District Court of the United States for the Southern District of New York.

MAN & PARSONS,
Proctors for Libellants, 64 Wall Street, N. Y.

The execution of this commission appears in certain schedules hereunto annexed.

FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Instructions to commissioners.

Annexed to the commission is an extract from the statutes of the State of New York, relative to taking testimony out of the State, which extract is directed by law to be annexed to the commission. But, as it does not comprise everything necessary to be attended to by
157 the commissioners, they are requested to observe the following more ample

INSTRUCTIONS.

I. All the commissioners named in the commission should have notice of the time and place of executing it, and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by the , named commissioner therein.

III. The acting commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"You do swear that the answers which shall be given by you to the interrogatories proposed to you, shall be the truth, the whole truth, and nothing but the truth. So help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "You do swear in the presence of the ever-living God;" and while so swearing he may or may not hold up his hand, in his discretion.

Or if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form: "You do solemnly, sincerely, and truly declare and affirm," omitting the words "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of witnesses produced, sworn, (or affirmed,) and examined the day of , in the year one thousand eight hundred and , at , under and by virtue of a
158 commission issued out of the district court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein Nicholas de las Casas is libellant vs. The Steamship Alabama, her tackle, &c., and the Steam-tug Game-Cock, her tackle, &c., are respondents and claimants, as follows:

A. B., of (insert his place of residence and occupation,) aged years and upwards, being duly and publicly sworn (or affirmed) pursuant to the directions hereto annexed, and examined on the part of the , doth depose and say as follows: First. To the first interrogatory he saith, &c. (Insert the witness's answer.) Second. To the second interrogatory he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus: First. To the first cross-interrogatory he saith, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of , 18 , before

Commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be endorsed by the acting commissioners in this manner:

"At the execution of a commission for the examination of witnesses, wherein Nicholas de las Casas is libellant vs. The Steamship Alabama, her tackle, &c., and the Steam tug-boat Game-Cock, her tackle, &c., are respondents and claimants, this paper-writing was produced and
159 shown to (insert the witness's name) and by him deposed unto at the time of his examination, before

Commissioners.

VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath and certify thereto:

"You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to , a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of

, 18 , before .

Commissioner.

X. The commissioner will make return on the back of the commission by endorsement, thus:

"The execution of this commission appears in certain schedules hereunto annexed."

Commissioner.

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions, and exhibits, must be folded into a packet and bound with tape. The acting commissioners are to
160 set their seal at the several meetings or crossing of the tape, endorse their names on the outside, and direct it thus:

U. S. district court, southern district of New York.

NICHOLAS DE LAS CASSAS
vs.
THE STEAMSHIP ALABAMA, &C., AND THE Steam tug-boat Game Cock, &c.

To Mann & Parsons, esqs., counsellors at law, No. 64 Wall street, city of New York, U. S. A.

XII. When the commission is thus executed, made up, and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no directions on the commission specifying the manner in which it is to be returned, then it must either be delivered to the court by one of the acting commissioners personally, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath before one of the judges or the clerk of the court—

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post-office, he making the following endorsement thereon:

"Deposited in the post-office at this day of , 18 , by me.

Commissioner."

In case of returning the commission by vessel, it is to be de-
161 posited by one of acting commissioners in the letter-bag of such vessel, he making upon the commission the following endorsement:

"Deposited in the letter-bag of the , now lying at , and bound for the port of New York, this day of , 18 , by me.

Commissioner."

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call on his arrival at this place upon Man & Parsons, esqs., counsellors at law, No. 64 Wall street, city of New York, United States of America, who will receive from him such commission.

Interrogatories to be administered to Mariana Cabrera Hernandez and Nicholas de las Casas, witnesses to be produced, sworn, and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the district court of the United States in and for the southern district of New York, wherein Nicholas de las Casas is libellant, against the Steamship Alabama and the Steamship Game Cock, their tackle, apparel, &c., and the Coastwise Company and William E. Gladwish are claimants, on the part and behalf of the libellant, before the commissioner in the writ hereto annexed named:

First interrogatory. What is your name, age, residence, and occupation? If you hold any official position, state the same, and describe its duties.

Second interrogatory. Were you acquainted with the bark Ninfa de los Mares; if yea, what opportunities of observation had you had of that vessel; how often had you seen her; how long had you known her, and when and where did you last see her?

Third interrogatory. If you, in answer to the preceding inter-
162 rogatory, shall say, or if the fact be, that you built or assisted in building the Ninfa, state what you had to do with her construction, and describe the vessel in detail as to her size, capacity, materials, build, finish, and equipment; how do such materials correspond as to durability, value, and excellence for the purpose, with the materials usually applied for ship-building in the United States or other countries, if you know?

Fourth interrogatory. When and where was that vessel built; do you know how her condition and value, at the last time you saw her, compared with her condition and value at the time she was built? If yea, state.

Fifth interrogatory. Had the Ninfa been damaged or injured in any way from the time she was first built to the time you last saw her; how careful use had she received; had any additions or improvements been put upon her during that period; and, if so, what, of what value, and at what expense?

Sixth interrogatory. Are you familiar with the value of vessels; if yea, how have you acquired such familiarity, and what was the value of the Ninfa de los Mares when you last saw her?

Seventh interrogatory. What was the cost of the construction of that vessel and of her equipment?

Eighth interrogatory. If you shall, in your answers, name any sum or sums of money, state in the currency of what country is the money of which you shall speak, and, if you know, state what proportion the value thereof bears to that of the pound sterling of Great Britain or the French franc or Napoleon?

Ninth interrogatory. Do you know of any other matter or thing material or necessary, or that may tend to the benefit and advantage of the libellant in this cause? If yea, state the same as fully and particularly as if you were thereto specially interrogated.

MAN & PARSONS,
Proctors for Libellant.
JOHN E. PARSONS,
Advocate for Do.

163 Settled subject to all legal objections and exceptions.

BEEBE, DEAN & DONOHUE,
Proctors for Game Cock.
OWEN, NASH & GRAY,
Proctors for Alabama.

(Endorsed:) U. S. district court, So. district of New York. Nicholas de las Casas agst. the S. Ss. Alabama and Game Cock. Interrogatories. Man & Parsons, procs. liblt. Due service of a copy of the within is hereby admitted. New York, Nov. 16th, 1867. Owen, Nash & Gray, procs. Alabama. Beebe, Dean & Donohue, procs. Game Cock.

Interrogatories to be administered to Cayetano Felipe Cardenas, José Ann Rodriguez Gonzalez, Ygnacia Rodriguez, José Buena Muerta Gonzalez, José Mendoza Morales, José Miguel de las Casas, witnesses to be produced, sworn, and examined in a certain cause of maritime and admiralty jurisdiction, now pending in the district court of the United States in and for the southern district of New York, wherein Nicholas de las Casas is libellant, against the Steamship Alabama and the Steamship Game Cock, their tackle, apparel, &c., and the Coastwise Company and William E. Gladwish are claimants, on the part and behalf of the libellant, before the commissioner in the writ hereto annexed named.

First interrogatory. What is your name, age, residence, and occupation? If you hold any official position, state the same, and describe its duties.

Second interrogatory. Were you acquainted with the bark Ninfa de los Mares; if yea, what opportunities of observation had you had of that vessel; how often had you seen her; how long had you known her, and when and where did you last see her?

Third interrogatory. When and where was that vessel built;
164 do you know how her condition and value, at the time you last saw her, compared with her condition and value at the time she was built? If yea, state.

Fourth interrogatory. Are you familiar with the value of vessels; if yea, how have you acquired such familiarity; and what was the value of the Ninfa de los Mares when you last saw her?

Fifth interrogatory. If you shall, in your answer, name any sum or sums of money, state in the currency of what country is the money of which you shall speak; and, if you know, state what proportion the value thereof bears to that of the pound sterling of Great Britain or the French franc or Napoleon.

Last interrogatory. Do you know of any other matter or thing material or necessary, or that may tend to the benefit and advantage of the libellant in this cause? If yea, state the same as fully and particularly as if you were thereunto specially interrogated.

MAN & PARSONS,
Proctors for Libellant.
JOHN E. PARSONS,
Advocate for do.

Settled by consent, subject to all legal objections and exceptions.
BEEBE, DEAN & DONOHUE,
Proctors for Game Cock.

OWEN, NASH & GRAY,
Proctors for Alabama.

(Endorsed:) District court U. S., so. dist. of New York. Nicholas de las Casas agst. the S. Ss. Alabama and Game Cock. Interrogato-

ries. Man & Parsons, procts. libellt., 64 Wall street. Due service of a copy of the within is hereby admitted. New York, Nov., 1867. Owen, Nash & Gray, procs. for Alabama. Beebe, Dean and Donohue, procs. for Game Cock.

Cross-interrogatories to be administered to the witnesses Cayetano Felipe Cardenas and others to be produced, sworn, and examined under the commission hereto annexed, by and on behalf of the claimants of the steamer Alabama therein named.

165 First cross-interrogatory. If you say you hold any official position, then state how long you have held the same; state also what your occupation was prior to taking and holding such official position.

Second cross-interrogatory. When and where did you first see the bark Ninfa de los Mares; when and where did you afterward see her; were you ever on board of her; how old was the bark; in what trade had she been employed since you first knew her?

Third cross-interrogatory. Had you any, and what, interest in the bark at the time she was lost? Do you own any vessels or any interest in any vessels? And, if so, state what vessels do you own or have any interest in.

Fourth cross-interrogatory. Have you ever bought or sold vessels of the size and capacity of the bark? If yea, state what vessels, and when and where they were bought. Do you know the market value of the bark? If yea, please state how you know her market value; that is, by what means or information you undertake to state the same.

Fifth cross-interrogatory. If you pretend to state the value of the bark, then state where and at what place you so estimate her value; state also whether or not such value includes her tackle, apparel, furniture, and everything connected with her use and employment.

Sixth cross-interrogatory. Have you not heard or do you not know that the bark at the time she was lost was on her way to New York to undergo repairs, to be recoppered, or to have other work done to her to put her in good condition? Have you not heard or do you not know that the bark had sustained injuries by collision with other vessels at Havana? In giving the value of this bark, have you taken these facts into consideration?

OWEN, NASH & GRAY,
Proctors for Claimants of the Steamer Alabama.
E. H. OWEN, *Advocate.*

Settled subject to all legal objections and exceptions.
MAN & PARSONS,
Proctors for Libellant.

166 (Endorsed:) U. S. district court, southern district of New York. Nicholas de las Casas agst. the S. S. Alabama and Game Cock. Copy. Cross-interrogatories on the part of the Alabama. Owen, Nash & Gray, procs. for Alabama. To Mess. Man & Parsons, procs. for libellt. Recd. Nov. 18, 1867.

Cross-interrogatories to be administered to the witnesses Mariano Cabrera Hernandez and Nicholas de las Casas, to be produced, sworn, and examined under the commission hereto annexed, by and on behalf of the claimants of the steamer Alabama, therein named.

First cross-interrogatory. If you say you hold any official position

then state how long you have held the same; state also what your occupation was prior to taking and holding such official position.

Second cross-interrogatory. When and where did you first see the bark Ninfa de los Mares; when and where did you afterwards see her; were you ever on board of her; how old was the bark; in what trade had she been employed since you first knew her?

Third cross-interrogatory. Had you any, and what, interest in the bark at the time she was lost? Do you own any vessels or any interests in any vessels? And, if so, state what vessels do you own or have any interest in.

Fourth cross-interrogatory. Have you ever bought or sold vessels of the size and capacity of the bark? If yea, state what vessels, and when and where they were bought. Do you know the market value of the bark? If yea, please state how you know her market value; that is, by what means or information you undertake to state the same.

Fifth cross-interrogatory. If you pretend to state the value of the bark, then state where and at what place you so estimate her value; state also whether or not such value includes her tackle, apparel, furniture, and everything connected with her use and employment.

167 Sixth cross-interrogatory. Have you not heard or do you not know that the bark at the time she was lost was on her way to New York to undergo repairs, to be recoppered, or to have other work done to her to put her in good condition? Have you not heard or do you not know that the bark had sustained injuries by collision with other vessels at Havana? In giving the value of the bark, have you taken these facts into consideration?

OWEN, NASH & GRAY,
Proctors for Claimants of the Steamer Alabama.
E. H. OWEN, *Advocate.*

Settled subject to all legal exceptions and objections.
MANN & PARSONS,
Proctors for Libellants.

(Endorsed:) U. S. district court, s. district of New York. Nicholas de las Casas agst. the S. Ss. Alabama and Game Cock. Cross-interrogatories on the part of the Alabama. Owen, Nash & Gray, procs. for claim'ts. To Mess. Mann & Parsons, procs. for libts. Recd. Nov. 18, 1867.

(Endorsed:) 19, 356. U. S. district court, southern district of New York. In admiralty. Nicholas de las Casas, libellant, vs. the Steamship Alabama, her tackle, &c., and the Steam Tug-boat Game Cock, her tackle, &c., respondents and claimants. Commission. Mann & Parsons, proctors for libellant, No. 64 Wall street, N. Y. City.

Depositions of the witnesses Mariano Cabrera Hernandez and Nicholas de las Casas, produced, sworn, and examined the fourth day of April, in the year one thousand eight hundred and sixty-eight, at Santa Cruz, of Palma, Canary Islands, under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein Nicholas de las Casas is libellant vs. the Steamship Alabama, her tackles, &c., and the Steam Tug-boat Game Cock, her tackles, &c., are respondents and claimants, as follows:

168 MARIANO CABRERA HERNANDEZ, of Santa Cruz, of Palma, carpenter, aged seventy-two years and upwards, being duly and pub-

licly sworn, pursuant to the directions hereto annexed, and examined on the part of the commissioner, doth depose and say as follows:

First. To the first interrogatory, he saith his name is Mariano Cabrera Hernandez; seventy-two years of age; ship-carpenter by trade; resident in Santa Cruz, of Palma; he fills the official appointment of first master ship-builder in the navy-yard of this province, in this jurisdiction, said office having been established by the Spanish government and legislation, and whose object is the construction and valuation of ships in all cases and circumstances which may occur, and the practicing of the examination of seaworthiness of Spanish ships of this commerce which start on a voyage.

Second. To the second interrogatory, he saith that he knew the Ninfa de los Mares; that this ship was built by deponent and other officers under his orders, in the dock-yard beside the fort of San Carlos, in this city, in the year one thousand eight hundred and sixty-two, and after its launching he constantly saw her anchored in the anchoring-ground of this port, from which she was only missing when she made her voyage to the Island of Cuba with passengers and cargo, having seen her for the last time in the year one thousand eight hundred and sixty-five, she having left for said port, from which she never did return.

Third. To the third interrogatory, he saith that, with the co-operation of his officers, he built, as he has already said, the bark Ninfa de los Mares, under the plans of her director and owner, Dn. Nicholas de las Casas, a practician in other constructions, and in accordance with the data and notes which he keeps of his labors. Her keel measured one hundred and twenty-three Spanish feet, one hundred and thirty-five feet
169 from the stern to the stern-post, her extreme breadth being thirty-three feet, and her depth of hold, eighteen and one-half feet; her tonnage being four hundred and seventy-seven Spanish tons. She had two decks with forty beams, each one of them being three hundred millimetres in width and one hundred and eighty deep, doubly curved, naturally to the fibre, three clam's, ledges or deck-streaks in each deck where the beams are bolted, timber knees and water-ways from in to out and from bottom to top, of three hundred and twenty-two millimetres deep, and two hundred and seventy-six in width; a water-way that links the beam and top timbers, forming streak on deck, with joined full cover on water-ways, its depth two hundred millimetres, and its width four hundred and sixty; five streaks on deck on the sides bolted from the bottom to the top and from the inside to the outside, depth one hundred and fifty millimetres and one hundred and fifteen in width; another streak in the middle of the deck of one hundred and fifteen millimetres in width and one hundred and fifty deep; her keel four hundred and seventy millimetres deep, and three hundred in width, forming in its extremeties natural curves, the clamps of a piece with the keel. Her stern-post and stern with natural curve, and of five hundred millimetres, bolted one with the others; taffrail nailed to the keel, and the stem three hundred and seventy millimetres, over stem of a piece with the stem of two hundred millimetres; massive sides, with eight breast-hooks, continuing with strakes to the stern; two thick planks by each side, and furring of forty-six millimetres; two transoms, one of four hundred and the other of three hundred and seventy millimetres square; keelson of two pieces of four hundred millimetres square, bolted in each floor-timber from inside to outside; double frames, square cut, the plain one of one hundred and eighty millimetres, placed with a space of one hundred and ninety-two millimetres; diagonals with two hundred and fifty milli-

metres square. The stern was formed by carved frames as far as
170 the stern-post, bolted in the transoms, and all massive, running near the mizzen-mast, with large knees to the fashion pieces, which bolt on the inner transom. The floor planking being ninety-two millimetres in thickness, wales planks being one hundred and fifteen millimetres in thickness, with ten snatch-cleats; pitch-pine wood deck-planks of eighty millimetres in thickness and one hundred and fifteen in width; gunwales of four hundred and eight millimetres in thickness; treenails streaks running from stern to stem mortised and bolted with the gunwale, sheathed with fine metal, being ninety millimetres in thickness and two hundred and sixty in width. Sheathing used in upper works, the principal wood being pitch-pine, of forty-six millimetres in thickness and one hundred and fifteen in width, the top timber being one hundred and sixty millimetres square in forty on each side, timbers of one piece, and head timbers from the keel to the eighth gunwale one hundred and eighty-four millimetres in thickness and four hundred in width; the combings of the hatchways with one hundred and thirty millimetres, the upper part two hundred and forty millimetres and the lower part five hundred millimetres in width; stanchions of twenty-eight millimetres in width and one hundred and eighty in thickness, and ninety feet long; cat-heads, two pieces, of three hundred millimetres square and twenty-two feet long; forecastle, fifteen feet long, with its handsome capstan; patent windlass; two iron and metal pumps with their machinery; four hatchways; patent rudder of sabica wood. In the false upper works, small top timbers and gunwale were made of mahogany, and its sheathing of pitch-pine wood of twenty-three millimetres in thickness, ornamented from the stern to the stem with one hundred and forty carvings representing various hieroglyphics and historical and capricious drawings; a mahogany and white-wood cabin at the stern, on the first deck, with two doors towards the foreship; a cupboard with a niche in the centre, and in the collaterals a liquor-stand and
a library; two state-rooms, with five berths in each; eight
171 state-rooms with three litters each; two longer rooms with cupboards and couches, table and seats alongside the cabin, of varnished mahogany, and cane seats, her cornices and colonnades gilt, three skylights and three lamps, two berths, two pantries and two water-closets, under *one same* deck, turning to the stern, with an iron and metal railing which starts from the main shrouds, and from the interior of this same cabin descends another railing with a mahogany and metal ladder to enter in the other cabin on second deck, which had twelve berths for married couples; near the stern she had a pantry with cupboards lined with tin plate. On the second deck, in the foreship, she had another cabin with litters enough to accommodate one hundred passengers. Farther ahead she had a state-room for spare sails, another cabin or mess-room for the crew, with berths and cupboards, and under this she had another for baggage, etc., and a coal-bunker. Her cutwater terminated with the sculpture of a full-figured nymph treading the shell from whence she originated, and from the same place arose gilt carvings that also represented marine plants; a wide belt of ornaments of gilt and carved branches enlaced together ran to the knuckle timbers and continued to the false upperworks, where she had in gilt thick letters the name of the vessel on both sides. The catheads and vertical columns of the windlass were adorned by several gilt grotesque caricatures at the extremities. The stern was adorned with ramages and other gilt mouldings, one foot in width and twenty metres in length, nearing almost the mizzen chain, and on the mirror appeared a picture with the hieroglyphics which rep-

resented this island, viz, a palm, its elevated mountains, and two floating banners, all of it made of cedar wood and colored; two weather-boards, a bath-room, the roundhouses, the mooresheads, and cross-trees were of mahogany and iron, copper-sheathed, and the roundhouses adorned with gilt branches, in whose centre was the name of the vessel.

172 The perdies and the blocks, pullies, etc., were of the best from the United States. The tackle of Russian hemp and the rigging of agave. Her sails were of cotton canvass, manufactured in New York, with another spare set of Russian canvass. Two strong chains proportionate to ship's tonnage, two smaller chains, five anchors, three warping-hawsers, sets of carpenter's and cooper's tools, water-casks, etc. In conclusion the nails and bolts used in this ship were of copper and iron, and not even one knee curved or turned was used that was not cut and fashioned on the fibre, and as everything was complete and of fine taste, he can assure that, from the comparisons which he has been able to make between the Ninfa de los Mares and the ships that have been in this bay, of American construction, and of other nations, some considered as first-class, the advantage has been in favor of the Ninfa de los Mares. Being able to assure that the timbers which are obtained from these forests for the construction, although they do not proceed from trees as thick and elevated as some of foreign parts, are, by the nature of the zone where they vegetate, as strong or stronger than oak, especially out of the water and in contact with iron.

Fourth. To the fourth interrogatory, he saith that said vessel was built in this city, in the year one thousand eight hundred and sixty-two. He saw her for the last time in one thousand eight hundred and sixty-five, on starting for Havana, she being then new and in the best of order, as also her hulk and masts, riggings, sails, and all in her complete for the voyage. That the value of this vessel, equipped as she existed in one thousand eight hundred and sixty-five, when she started for the last time from this port, was forty thousand hard dollars, or, in five franc pieces, its equivalent of forty-two thousand one hundred and five; taking into consideration, in order to fix this value, not only the superiority of the timbers that were used in her construction, but the expense of their cutting and conveyance from the mountains named La Garga, where it is

173 necessary to construct transit roads, for they do not exist, and pay exorbitant wages therefor. And it must be also borne in mind that the common cost for the building of vessels of high tonnage in these dock-yards is between eighty and ninety hard dollars for each Spanish ton, which value was the same she was worth when she was built, with her sheathings and necessaries as she had not received any damages to make her diminish in value.

Fifth. To the fifth interrogatory, he saith that said vessel did not receive, since she went to sea, until she was sunk in New York, any damages except two gallings with other vessels at anchor, so slight that the only damage done was the damaging of the figure of the nymph which crowned her cut-water, and part of her bowsprit and rigging, which damages were immediately repaired; that the said vessel was always carefully cared for, because her owner attended to her with the greatest care, as she was so profitable in her voyages, and his skill in his profession offered him double facilities to attend to her preservation; that when she went to sea she received her copper sheathing and other things, having always her fittings replaced and improved.

Sixth. To the sixth interrogatory, he saith that he has acquired his knowledge in the exercise of his trade and the public charged of builder and first master ship-builder, under which character he had performed

several inspections and surveys on national and foreign vessels, and gathered as many datas, which have been necessary for the exactitude of the operations.

Seventh. To the seventh interrogatory, he saith that, according to the explanations which he has already made in answer to the aforesaid questions, the Ninfa de los Mares and her fittings, including all of its useful appurtenances, had a cost, and was worth in her construction, the forty-two thousand one hundred and five-franc pieces which has already been expressed.

Eighth. To the eighth interrogatory, he saith that he has made use of the Spanish hard dollar, converting it into five-franc pieces,
174 five of which make one pound sterling, at the exchange of ninety-five reals vellon for the English pound sterling.

Ninth. To the ninth interrogatory, he saith that he knows that the owner of the Spanish barque Ninfa de los Mares, which was sunk, has experienced in the loss of his vessel a loss far from being indemnified and compensated with the entire payment of the value which has been fixed to her building, fitting, and necessaries; because, besides the great outlays that an owner always makes when he personally and directly carries out any improvements in order to perfect the execution of his works, this vessel sailed with special circumstances for her voyage, such as great seaworthiness, heavy freighting, good sailing conditions, easy motion and management, and as all persons that experienced her in her voyages gave testimony to the facts. The fame of so good a vessel, and the confidence thereon, increased her value above the current market price, for which her owner never consented to sell her to the many purchasers that applied to him, he justly and prudently considering the handsome profits of five or six thousand hard dollars that he made in her regular expeditions of from five to six months demurrage probable, which profits he would surely have made, in the four voyages which she has not been able to perform since she was run down and sunk, until the end of the year 1867, and which would have amounted to twenty thousand hard dollars, or its equivalent of twenty-one thousand one hundred and two five-franc pieces. The witness also thinks it should be taken into consideration that the owner, Don Nicolas de las Casas, during the lengthened time of the building of his vessel had his capital employed without any interest.

(Signed) MARIANO CABRERA.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this eighth day of April, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

175 Follows the deposition of the witness Mariano Cabrera Hernandez:

First. To the first cross-interrogatory, he saith that his official charge of first master ship-builder dates from many years back, he not finding it possible to fix at this moment the exact number of years, although he has formal appointment made in his favor by the principa-marine authority of this province. Before this appointment he practiced, since a child, the trade of ship-carpenter.

Second. To the second cross-interrogatory, he saith that he has already answered all the particulars of this question; that several times he was aboard the Ninfa de los Mares; that this ship was new, and

made voyages to the island of Cuba, carrying passengers and some cargo.

Third. To the third cross-interrogatory, he saith that he had no interest in the barque whatever when she was lost, and that he is not owner or partner in any other vessel.

Fourth. To the fourth cross-interrogatory, he saith that he has not bought or sold vessels; that the value of the Ninfa in the market was that—some of her building and fittings, already fixed in—forty-two thousand one hundred and five five-franc pieces; but that this vessel, on account of her special going qualities, had a higher appreciative price, and no one would have parted with her for her real or intrinsic value. Lastly, that in order to establish the value of said vessel in the sum he has already mentioned, he has borne in mind the cost of her building, the market prices, and all other circumstances and proper data.

Fifth. To the fifth cross-interrogatory, he saith that he has estimated the value of the vessel as in this city, and in the same state as when she left this port for her voyage to Havana in 1865, including the
176 vessel's fittings, canvass, sails, and her necessaries for a voyage.

Sixth. To the sixth cross-interrogatory, he saith that he does not know nor has he heard of the facts involved in the question, but, on the contrary, he knows from private sources and from public notoriety that the bark did not suffer any other damage during her existence, before being sunk in New York, than the tearing of the sculpture of her cut-water and part of the bowsprit and rigging, which damages, being so light, were immediately repaired; that her voyage to New York had for its only object the employing there of the owner's capital in divers articles in order to import them to this city, and consequently he did not take into account, on estimating the value of the bark, the accidents mentioned in this interrogatory.

(Signed) MARIANO CABRERA.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 14th day of April, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Deposition of the witness Nicolas de las Casas Lorenzo, produced and sworn on the fourth day of April, in the year one thousand eight hundred and sixty-eight, as above mentioned, and now examined this fifteenth day of the month and year above written, as follows:

NICOLAS DE LAS CASAS LORENZO, ship-owner, aged forty-six years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the commissioner, doth depose and say as follows:

177 First. To the first interrogatory, he saith his name is Nicolas de las Casas Lorenzo; forty-six years of age; profession, merchant and ship-owner, without any official position.

Second. To the second interrogatory, he saith that he knew the Ninfa de los Mares, having had her built with his own resources, and being obliged to open a dock-yard on purpose for her, separate from that appointed in this port for such buildings, because such dock-yard was then occupied, and was not large enough for vessels such as the Ninfa de los Mares, which was larger than any ever built in that dock-yard. He launched her, had her masted and fitted out in order to make voyages to America, transporting passengers. In the last of said voyages

begun from this port in one thousand eight hundred and sixty-five, he decided on returning via New York, because the cholera was then in Europe, and it would be advantageous to start from that port, employing there his capital. On entering New York port, inside the river, under charge of a pilot, and in tow, she was run into by the steamer Alabama, losing the ship with all the moneys on board.

Third. To the third interrogatory, he saith that he had already answered that the vessel was wholly his; and in regard to the other interrogatories he asserts that this vessel, of clipper form, was built with care; that her keel measured one hundred and twenty-three Spanish feet, and one hundred and thirty-five feet from the stern to the stem-post; her extreme breadth being thirty-three feet and her depth of hold eighteen and one-half. She had two decks, with forty beams on the upper one, each beam being three hundred millimetres in width, and one hundred and eighty deep, with forty beams of same dimensions on the lower deck, doubly curved, naturally to the fibre; three clam's in each deck; ledges or deck streaks, in each deck where the beams are bolted; timber knees and water-ways from in to out, and from the bottom to the top, of three hundred and twenty-two millimeters in depth, and
178 two hundred and seventy-six in width; a water-way that links the beam and top-timber forming streak on deck with joined full cover on water-ways, being two hundred millimetres in depth, and her width four hundred and sixty; five streaks on deck on the sides, bolted from the bottom to the top, and from the inside to the outside, being in depth one hundred and fifty millimeters, and one hundred and fifteen in width; eight streaks in the middle of the deck of one hundred and fifteen millimeters in width and one hundred and fifty deep. Her keel of one hundred and twenty-three lineal feet, being four hundred and seventy millimetres in depth, and three hundred in width, forming in its extremities natural curves entirely clamped with the keel. Her stern-post and stern with natural gyrations or curves, and of five hundred millimetres, bolted one with the others; taffrail nailed to the keel, and the stem of three hundred and seventy millimeters; over-stern of a piece with the stern, of two hundred millimetres, massive sides, with eight breast-hooks continuing with strakes to the stern; two thick planks by the side, and furring of forty-six millimetres; two transoms, one of four hundred and the other of three hundred and seventy millimetres in dimension; keelson of two pieces of four hundred millimeters in dimension, bolted in each floor-timber from in to outside; double frames, square cut, the plain one of one hundred and eighty millimetres, placed with a space of one hundred and ninety-two millimetres diagonal, with two hundred millimetres in dimension. The stern was formed by curved frames as far as the stern-post, bolted in the transom, and all massive, running near the mizzen-mast, with large knees on the fashion pieces which bolt with the inner transom. The floor planking being ninety-two millimetres in thickness; wale plankings being one hundred and fifteen millimetres in thickness, with ten snatch-cleets, pitch-pine wood; deck planks of eighty millimetres in thickness, and one hundred and fifteen in width; gunwales of four hundred millimeters
179 in width and one hundred and eight in thickness, running from the stern to the stem, mortised and bolted with the gunwale, sheathed with fine metal, with ninety millimetres in thickness, and two hundred and sixty in width; sheathing used in the upper works, principal wood being pitch-pine wood of forty-six millimeteres in thickness, and one hundred and fifteen in width; her top timbers being one hundred and sixty millimetres in dimension in number of forty by

each side, timbers of one piece from the keel to the eighth gunwale, with one hundred and eighty-four mil'imeters in thickness and four hundred in width; the coamings of the hatchways with one hundred and thirty mil'imeters the upper part, and the lower part with two hundred and forty, and five hundred millimeters in width; stanchions of twenty-eight millimeters in width, one hundred and eighty in thickness, and ninety-six feet; cat-heads two pieces of three hundred millimetres in dimension, and twenty-two feet long; forecastle of fifteen feet long, with its handsome capstan, patent windlass arranged to the burthen of the vessel; two iron and metal pumps with its machinery; four hatchways; patent rudder of sabicu wood. In the upper works suspenteras and gunwale were constructed of mahogany and its sheathing of risa of twenty-three millimetres in thickness; adorned from the stern to the foreship with one hundred and forty mahogany engravings, representing various hieroglyphics and historic drawings y al capricho; a mahogany and white-wood cabin at the stern on the first deck, measuring sixteen metres in length y al ancho de banda, with two doors on the stern side and two on the foreship side, a cupboard with a niche in the centre, and in its collaterals a liquor-stand and a library; two rooms with five litters in each, eight rooms respectively, with their litters; two larger rooms with cupboards and couches, tables and seats the length of the cabin, of varnished mahogany and resella; her gilt cornices and colonnades; three sky-lights and three lamps; two berths, two pantries
180 and two water-closets under one same deck, turning to the stern with an iron and metal railing which parts from the main shrouds, and from the interior of this same cabin descends another railing with a mahogany and metal ladder to enter in the other cabin on second deck, which had twelve berths for married couples. Near the stern she had a pantry with cupboards covered with tin plate. On the second deck, near the foreship, she had another cabin with enough litters to accommodate one hundred passengers. On foreship she had a state-room for sails; another cabin or room for the crew, with litters and cupboards. Under this she had another for baggage, &c., and a coal-bunker. Her cut-water terminated with a sculpture in full figure of a nymph treading the shell from where she had originated, and from the same place arose gilt carvings that also represented marine plants, enchaining and running to the knuckle timbers a wide, garnished scarf, composed of gilt and carved with branches; it still continued to the false upperworks, where she also had in thick gilt letters the name of the vessel at one side, and the other the cat-heads and vertical column of the windlass were adorned with several gilt, grotesque caricatures with which it terminated. The stern appeared revested branches and other gilt ornaments, it being one foot in width and twenty metres in length nearing the miz'en chain, and on the mirror appeared a picture with the hieroglyphics which represented this island. They were as follows: A palm, its elevated mountains, and two hoisted colors, all of it constructed of cedar-wood, and colored. A kitchen, with an oven made of bricks to bake bread; a set of tin plates for second-class passengers; tubs for washing, and other serviceable articles; two garrets; a bath-room. Her roundhouses, mooresheads, and cross-trees were of Virginia mahogany and iron, and those were adorned with gilt branches, containing in the center of the ornaments the name of the vessel.

Perches and block pullies were of the best from the United States.
181 All her clamps, etc., were of the best Swiss iron; her tackle of Russian hemp; the rigging of agave. Her sails were of cotton canvass, manufactured in New York, with another spare set of Russian

hemp; two strong chains of the tonnage of the vessel; two thin chains, four anchors; five small anchors; three hawsers of warp-rope; sets of carpenters' and coopers' tools; sixty water-casks; plates, and other utensils for the use of the crew and passengers. In the stern-cabin she had a complete set of fine and ordinary earthenware, glass and linen services. Three boats with their davits; two eight-pound cannons, with their corresponding ammunition, etc., a chronometer, an aneoride barometer, a thermometer, three compasses, eighty flags of the Spanish provinces, signal flags and others, three more Spanish flags of this province, and the particular flag of the vessel. A medical varnished chest with all its departments, comprising medical drugs, with medical instruments, and several books of practical medicine, and a bronze bell.

In conclusion, the set and collection of nails and bolts used in his vessel were of copper and iron, and not even one knee, curved or turned, was used that was not cut and fashioned to the fibre. The deponent proposed to do a solid embarcation, and well fitted, as it concerned his interests and in accordance with his faculties; he knew that the building of this vessel, if not the best, or did not exceed, certainly she was not less than any of her class fitted and equipped in the United States, which vessel he has various times observed, being able to affirm that the timbers which are generally used in other countries in naval constructions have no preference whatever to the pine wood that grows in the mountains of this island, and which was used in the construction of the Ninfa de los Mares.

Fourth. To the fourth interrogatory, he saith that he built said vessel in the years one thousand eight hundred and sixty-two and sixty-three, in the dock-yard which was purposely constructed on the
182 shore of this city, near Fort San Carlos, and as to the details and particulars of said building he has already made them known in answer to the third interrogatory, whose contents he holds as reiterated here; and as the already-mentioned vessel only was at service two years, and was built in a solid manner, with the intent of never parting with her, she being well equipped and kept, and as she had the luck not to have suffered any tempests, when she was sunk in New York she was worth as much, or more, as when she was finished and for the first time went to sea, because she had an excellent copper-sheathing and divers other spare articles on her first expedition to the Island of Cuba. For all which, and by the memorandum he has, the amount of his disbursements, including those of equipments, was above forty-two thousand hard dollars, equivalent to forty-four thousand two hundred and ten and one-half French napoleons, leaving aside fractions; and as regards value in sale, he was offered for the vessel, when already at sea, much more than her cost and costs. This he did refuse, as the profits thereon obtained were small as compared with her sea-going qualities, which promised far greater profits, showing a handsome prospect for the future, should no accident befall her.

Fifth. To the fifth interrogatory, he saith that said vessel, before what happened to her in New York, was copper-sheathed, wormed, her rigging furred, and new sails made. Nothing happened to her, except twice having the sculpture of her head-figure damaged slightly, which was immediately repaired without in the least influencing her value, for which reason no additions were made, except those for substituting some of her rigging and other necessaries, always improving the ship; for she being always under the personal care of deponent, was always duly and specially attended to by him.

Sixth. To the sixth interrogatory, he saith that his knowledge is founded on the facts by him stated when answering to the before-mentioned interrogatories; this, and the value of said vessel, has
183 already been stated with due specification, and therefore he refers to it, so that it may be understood to be here repeated verbatim.

Seventh. To the seventh interrogatory, he saith that he has already stated in due order, in the fourth answer, that said vessel, fully fitted and equipped, cost him more than forty-four thousand two hundred and ten French napoleons in cash.

Eighth. To the eighth interrogatory, he saith that he has calculated on the Spanish hard dollar, and afterwards converted it to the French napoleon, five of which make one pound sterling at the exchange of ninety-five reals vellon per pound sterling.

Ninth. To the ninth interrogatory, he saith that he can assure that the losses and damages which he has suffered on account of the vessel's sinister are far from being indemnified by the indemnity asked, which does not exceed the value of the vessel, according to the facts which he has already stated, and of the interests of the capital. That the Ninfa de los Mares, on account of her unsurpassed qualities, had acquired a great value of appreciation, nothing exaggerated, as said special conditions brought a general demand for the employment of the ill-fated vessel, which enabled her to earn from five to six thousand hard dollars clear profits in each voyage of five or six months' duration; which profits in the four voyages she undoubtedly would have made with the regularity of her first voyages, as the owner actively freighted and supplied her with his own money, would have amounted to, on a fair calculation, about twenty-one thousand and fifty-two French napoleons; the loss being independent and besides other losses which his business has suffered for the want of a vessel of her tonnage, so distinguished by the shortness of her voyages; and without taking either into consideration the probabilities of an excellent and profitable sale when
184 he should find it convenient to do so, as many had been the offers made to him.

(Signed) NICOLAS DE LAS CASAS LORENZO.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this eighteenth day of April, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Follows the deposition of the witness Nicholas de las Casas Lorenzo:

First. To the first cross-interrogatory, he saith that since he entered the age of reason and learned the first letters, he studied Latin, with the object of entering into the higher classes; but he gave up this idea in order to follow a commercial one, under the direction of his father.

Second. To the second cross-interrogatory, he saith that he has already answered, in the first part of this interrogatory, that he always knew the vessel alluded to since she was first launched, except when she made her voyages on the high seas; and that the last time he was aboard of her was in the year one thousand eight hundred and sixty-five, when she cleared for Havana, at which time she had been three years on the waters.

Third. To the third cross-interrogatory, he saith that when the steamer Alabama sunk the Ninfa de los Mares, the whole value of the same vessel—that of her equipments and all that is necessary for navigation—was his, and, besides, two hundred and thirteen gold doubloons

in specie, all of which went down and was lost; that deponent has been for many years ship-owner, and personally commanded his two vessels, Amparo and the San Miguel, in long voyages, in which he frequented several national and foreign ports.

Fourth. To the fourth cross-interrogatory, he saith that he
185 built the brigantine Amparo, and sold her, after having navigated her, being of less capacity than the Ninfa de los Mares; that in this city the vessels which are sold in their first period of service are valued at their outlays and costs of building, and a compensation profit agreed upon for the time and trouble invested on them, for the capital inactive during the building, and other considerations; and that the adopted basis of valuation for vessels solidly built and well furnished is that of eighty-four to ninety-four French napoleons for each ton of measurement; and said being the standard type on which the offers are made, according to the special conditions which the vessel is known to possess.

Fifth. To the fifth cross-interrogatory, he saith that in stating the market price of this vessel he has considered her in this city, and in the same conditions she was when he cleared her for Havana in the year one thousand eight hundred and sixty-five; that instead of diminishing in value since she was first at sea, she had received improvements and additions when she left Havana for New York; that he included in the value her hull, sails, rigging, and all her equipments, except the specie, chronometers, and several other nautical instruments.

Sixth. To the sixth cross-interrogatory, he saith that he has already said all that is necessary. In order that this interrogatory may find true answer, he will again repeat that his vessel on sailing for the port of New York had for only object the loading in said port and returning to this one, which is that of her register; for she had not suffered any collision or required the least repair. This being the exact truth, deponent suspects that the insinuations involved in the cross-question coincide with those written by an unknown hand on a paper which he found at the door of his house shortly after an individual belonging to the Ninfa de los Mares sued him before the courts for the payment of wages during the time which the crew remained at New York after the loss of the vessel. And this was done under interested advice; and in
186 said writing he was threatened with a statement, on the part of the parties who wrote it, that if he did not yield to such a ridiculous claim, other parties would write to New York, saying the vessel had experienced damages, in order to throw obstacles in the way of adjustment of indemnities. Said threat was carried on, the lampoon or writing, being again placed at his door; but deponent, considering this to be an infamous and despicable proceeding, he (deponent) looked upon it with all the contempt it deserved.

(Signed) NICHOLAS DE LAS CASAS LORENZO.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this twenty-first day of April, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Depositions of the witnesses Cayetano Felipe Cardenas, José Aña Rodriguez Gonzalez, Ignacio Rodriguez Gonzales, José Buenamuerte Gonzalez, José Mendosa Morales, and José Miguel de las Casas, produced, sworn, and examined the twenty-third day of April, in the year one thousand eight hundred and sixty-eight, at Santa Cruz of Palma, Canary Islands, under and by virtue of a commission issued out

of the district court of the United States for the southern district of New York, in a certain cause therein depending and at issue, wherein Nicolas de las Casas is libellant vs. The Steamship Alabama, her tackles, etc., and the Steam Tug-boat Game Cock, her tackles, etc., are respondents and claimants, as follows:

CAYETANO FELIPE CARDENAS, of Santa Cruz of Palma, shipwright and caulker, aged sixty years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the commissioner, doth depose and say as follows:

First. To the first interrogatory, he saith that his name is
187 Cayetano Felipe Cardenas; aged sixty years and upwards; shipwright and caulker, of Santa Cruz of Palma; that he performs the duties of first master ship-builder of the navy-yard of this province, who has in charge the attending to the building of vessels in these dock-yards; make the valuations thereof; inspect them when ready for sea, with the object of testifying to their seaworthiness.

Second. To the second interrogatory, he saith that he knew said vessel from the time of her building until the year one thousand eight hundred and sixty-five, when she started for S. Cristobal of Havana, from whence she did not return, on account of having been sunk in New York; that whenever she was preparing to sail on any voyage, he was aboard and examined her with great care.

Third. To the third interrogatory, he saith that she was built in the dock-yard of this city, near the St. Charles Castle, in the year one thousand eight hundred and sixty-two, and not having suffered any damages, but, on the contrary, always improving in her primitive value and estimation; said value increasing on her last voyages, as the good qualities of said vessel and the strength of her timbers were gradually developed.

Fourth. To the fourth interrogatory, he saith that he has particular knowledge, and has acquired it in the performance of his duties; and, in accordance thereof, he asserts that, according to this firm knowledge and loyal understanding, said vessel was really worth, with all her equipments, the last time he saw her, in the year one thousand eight hundred and sixty-five, forty thousand hard dollars.

Fifth. To the fifth interrogatory, he saith that he has spoken of Spanish hard dollars, whose unity is above the French napoleon one part of the twenty in which the hard dollar is divided.

Sixth. To the sixth interrogatory, he saith that, in his opin-
188 ion, the owner of the Ninfa de los Mares has suffered such a loss in his house and interests, with that of said vessel, that, even if he be re-imbursed of the amount in which the witness has just valued the vessel, he will not receive the just due compensation, inasmuch as the Ninfa de los Mares, on account of her good qualities, had excellent offers of purchase, and, besides, her owner had his capital, during her building, inactive, and each of her former voyages having left a profit of more than five thousand dollars, she being always loaded and provided for by her owner; in the four voyages which she has been unable to make since her sinking she would have left a considerable profit, if no accident had happened, for all other vessels well navigated and commanded have derived great profits in the same period.

(Signed) CAYETANO FELIPE CARDENAS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this twenty-third day of April, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Commissioner, and Consular Agent.

Follows the deposition of the witness Cayetano Felipe Cardenas:

First. To the first cross-interrogatory, he saith that he has performed said duties, under appointment of the principal marine authority, during twenty-eight years, and continues performing it, and before this, in his youth, he performed the same duties of shipwright and caulker, in which he is at present engaged.

Second. To the second cross-interrogatory, he saith that, in his before-mentioned answer, he has answered the first, second, and third points of this interrogatory, and has only to state that the vessel was two years at sea, days more or less, as she was launched at the beginning of the year one thousand eight hundred and sixty-five; that she performed her voyages to the Island of Cuba, taking cargo and passengers, and bringing on her home voyage colonial products and passengers.

189 Third. To the third cross-interrogatory, he saith that several years ago, in company with his brothers, he owned a vessel named La Fe, and that he did not own or have any share in the interest whatever in the Ninfa de los Mares before she was lost, nor at any time.

Fourth. To the fourth cross-interrogatory, he saith that he has not purchased or sold vessels of the same tonnage as the Ninfa de los Mares, but only smaller, and named La Fe, already mentioned, and which was built in this island; that it is easy for him to ascertain the value of vessels, on account of his profession, and the practice acquired by it; that the value of a vessel in this port, built like the Ninfa de los Mares, equipped as she was, and of her condition, is considered about eighty-six hard dollars per ton, or its equivalent, ninety French napoleons, which is in conformity with his knowledge as an expert in the building business, and this is also the opinion of all persons well posted on the matter, which opinion forms the fixed standard of valuation.

Fifth. To the fifth cross-interrogatory, he saith that he has spoken of Spanish hard dollars, which unity exceeds that of the French napoleon in one part of the twenty in which the hard dollar is divided.

Sixth. To the sixth cross-interrogatory, he saith that he is confident that the Ninfa de los Mares intended touching at New York because it was convenient to her commercial interests, and not for cause of any repairs; that she had never experienced any storms nor damages, with the exception of two chafings when in port, near the foreship; another vessel having damaged her figure-head and bowsprit, which was soon repaired.

All of which he has not thought of any consequence in considering.

(Signed) CAYETANO FELIPE CARDENAS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this twenty-fifth day of April, 1868, before——

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent, and Commissioner.

190 Deposition of the witness José Aña Rodriguez Gonzalez, produced and sworn on the twenty-third day of April, in the year one thousand eight hundred and sixty-eight, as above mentioned; and now examined this twenty-seventh day of the same month, as follows:

JOSÉ AÑA RODRIGUEZ GONZALEZ, of Santa Cruz of Palma, merchant, aged thirty-four years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the commissioner, doth depose and say as follows:

First. To the first interrogatory, he saith his name is José Aña

Rodriguez Gonzalez; thirty-four years of age; maritime and land-merchant, and has no official appointment.

Second. To the second interrogatory, he saith that he knew and personally observed said vessel in her building and in the sea, because he frequently saw her when so building, and every day when anchored in this port; and even went several times on board, until the year one thousand eight hundred and sixty-five she started on her last voyage, from which she never returned.

Third. To the third interrogatory, he saith: She was built in this city, near St. Charles' Castle, in low tide, in the year one thousand eight hundred and sixty-two, and not having experienced any damages, her primitive value and estimation did not diminish in the short time she had of service, being so well cared as she was besides.

Fourth. To the fourth interrogatory, he saith: That he has acquired said knowledge in his commercial profession, and because he has attended very specially and minutely to the building of his own; and according to his calculations, and the opinions of other intelligent parties, a fine-built ship like the Ninfa de los Mares, with complete equipments and fittings as she had, is worth, with cost and costs, between ninety to eighty hard dollars per ton; that it is the most cur-
191 rent value, and such as he calculates to said vessel, whose tonnage was four hundred and seventy-four tons.

Fifth. To the fifth interrogatory, he saith that he has spoken of Spanish hard dollars, each one equivalent to a French napoleon and one-nineteenth part of the other.

Sixth. To the sixth interrogatory, he saith that considering the good conditions of the vessel sunk in New York, the frequency of her voyages, under the impulse of the owner's ample means, and the good returns which she has rendered, he, the witness, contemplates that the payment which might be made to said ship-owner of her value, by fixing said payment according to the average standard already mentioned in the above deposition, would not indemnify his losses in consequence of the sinking of his vessel.

(Signed) JOSE AÑA RODRIGUEZ.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 27th day of April, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent, and Commissioner.

Follows the deposition of the witness Jose Aña Rodriguez Gonzalas:

First. To the first cross-interrogatory, he saith that he repeats he does not hold any official position, and has always been a merchant.

Second. To the second cross-interrogatory, he saith he believes he has already manifested everything relating to the first, second, and third particulars in his answers to the former interrogatory. Regarding the rest, he will say that the vessel was launched in the year one thousand eight hundred and sixty-two, and was lost in New York in eighteen hundred and sixty-five, and had been employed in the carrying of passengers to the Island of Cuba, and in other speculations of her owner.

192 Third. To the third cross-interrogatory, he saith that he has held and holds an interest in a vessel named the Rosario, which also makes her voyages to the Island of Cuba, and was built at the same time as the Ninfa de los Mares; and that he had no interest in this last-mentioned vessel when she was lost.

Fourth. To the fourth cross-interrogatory, he saith that he has

never bought vessels, but has superintended the building of one of his ownership in this city of lesser tonnage than the Ninfa de los Mares. With such precedents, and from what has come to his notice regarding the purchase and sale of vessels, he is enabled to form a fair judgment of the legitimate value of the Ninfa de los Mares in this city, and fix the estimate expressed in the above answer.

Fifth. To the fifth cross-interrogatory, he saith that he has exclusively taken this market into consideration, and has included everything in order to come to said conclusions.

Sixth. To the sixth cross-interrogatory, he saith that it is positively known to him that the Ninfa de los Mares, being in good condition, and after due examination of her and her crew by the authority of the navy-yard, without which requisite no vessel is allowed to leave this port, sailed with passengers and cargo for Havana in the year one thousand eight hundred and sixty-five, from which port she decided on returning via New York, her owner investing there his funds, as this island was then incommunicated with Europe on account of the Asiatic cholera which then infested said islands, there being no idea of repairs to said vessel, as she was not in need of them, she having only experienced two chafings in the foreship, one in Havana and another when at anchor in this port, which simply damaged the figure of her cutwater and part of her bowsprit, and which damages were immediately repaired, so that for this reason he had not made any deductions in the estimation of her value.

193 (Signed) JOSE AÑA RODRIGUEZ.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 29th day of April, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Deposition of the witness Ignacio Rodriguez Gonzales, produced and sworn on the twenty-third day of April, in the year one thousand eight hundred and sixty-eight, as above mentioned, and now examined this thirteenth day of the same month and year above mentioned, as follows:

IGNACIO RODRIGUEZ GONZALEZ, of Santa Cruz of Palma, merchant, aged thirty-one years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the commissioner, doth depose and say as follows:

First. To the first interrogatory, he saith his name is Ignacio Rodriguez Gonzalez; thirty-one years of age; merchant by profession, and has no official position.

Second. To the second interrogatory, he saith since the beginning of the building of said vessel until she sailed in the year one thousand eight hundred and sixty-five, last of her voyages to America, he saw and observed her with great attention, and was several times on board, only losing sight of and not visiting her when she was on her voyages.

Third. To the third interrogatory, she saith he was built in the city, near St. Charles fort, in the year one thousand eight hundred and sixty-two; and not having suffered any damages, her primitive value and estimation were not less in the short time she was at sea, having been perfectly attended to by her owner.

194 Fourth. To the fourth interrogatory, he saith he is not ignorant of said matters on account of his mercantile profession and ownership of vessels, and because he is well posted in the building of

the aforesaid vessel; and in accordance with his own judgment, and from what he has heard from other parties, a well-built vessel like of the burthen of the Ninfa de los Mares, so completely equipped as she was, is worth about eighty or ninety hard dollars per ton.

Fifth. To the fifth interrogatory, he saith that he mentioned Spanish hard dollars, whose unity is equivalent to one and one-nineteenth part of the French napoleon of five francs.

Sixth. To the sixth interrogatory, he saith that the owner of this vessel, who is Don Nicolas de las Casas, was accustomed to clear her with activity, loading her on his own account, and derived therefrom considerable profits; that he has suffered such a great loss with the sinking of said vessel, that, even if they should pay him her value according to the estimates made in this deposition, it would not cover even two-thirds of the value of the real damages experienced by the owner, and the deponent in so expressing himself has not taken into consideration the true amount which a vessel of such good conditions might fetch in sale.

(Signed) IGNACIO RODRIGUEZ.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this thirteenth day of April, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Follows the deposition of the witness Ignacio Rodriguez Gonzalez:

First. To the first cross-interrogatory, he saith that he has never had any official position.

Second. To the second cross-interrogatory, he saith that as in
195 the previous deposition, he has already answered to the greater part of the present cross-interrogatories, of this he has only to add, as knowing it from personal observation, that the vessel Ninfa de los Mares went to sea at the end of the year one thousand eight hundred and sixty-five with nearly two years' service in her commercial voyages from these islands to that of Cuba.

Third. To the third cross-interrogatory, he saith that he was and is the owner of the Spanish brig Rosario, on the line to America, and never owned any interest in the Ninfa de los Mares, either before or after she was lost.

Fourth. To the fourth cross-interrogatory, he saith that he never sold large or small vessels, but knows their value, for the reasons already stated, and to which he refers, and in view of which he has fixed the value of the Ninfa de los Mares.

Fifth. To the fifth cross-interrogatory, he saith that he has only taken this market as a basis for his calculations, and omitted nothing.

Sixth. To the sixth cross-interrogatory, he saith that he knows nothing of what he is questioned on, nor heard anything about it, and believes it false, because he knows for certain that the vessel left this port for Havana in good condition, taking passengers and cargo, with intention of returning via New York, to load there the merchandise she was to bring to this market; that regarding the collisions which the Ninfa de los Mares suffered during her existence, until she was sunk at New York, they were merely slight damages of the figure on her cutwater and bowsprit, once here, and another time in Havana, because of chafing against other vessels when she was at anchor, being all easily and promptly repaired; for which reason he has not taken said chafings into consideration.

(Signed) IGNACIO RODRIGUEZ.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this second day of May, 1868, before me.

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

196 Deposition of the witness José Buenamuerte Gonzalez, produced and sworn on the twenty-third day of April, in the year one thousand eight hundred and sixty-eight, as above mentioned, and now examined this sixth day of the month of May, of the same year above mentioned, as follows:

JOSÉ BUENAMUERTE GONZALEZ, of the Villa of San Andres and Sauces, in the island of Palma Canaries, captain of the merchant navy, aged fifty-six years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the commissioner, doth depose and say as follows:

First. To the first interrogatory, he saith his name is José Buenamuerte Gonzalez; fifty-six years of age; being captain and pilot of merchantmen, and maritime mayor of La Cala, in the jurisdiction of Villa de San Andres and Sauces, where he resides. From his youth he devoted himself to nautical studies, but afterwards he gave himself up to the cultivation of his farm, and at present he discharges the duties of maritime mayor; said duties being the regulation and superintendence of the seafaring men employed in the works on the shipping at Villa San Andres and Sauces, and in guarding those coasts, etc., etc.

Second. To the second interrogatory, he saith that he knew perfectly said vessel, belonging to Don Nicolas de las Casas, because he saw the plans draughted by her designer and owner, who explained to him all her proportions, from which he at once became confident of the success she would meet; he saw her building, and was so pleased with her when launched, that whenever he had an opportunity he went on board of her when she was in this port, and he continued to do so until she left in the year one thousand eight hundred and sixty-five, from which voyage she never did return, on account of her having been sunk in the river of New York, by the steamship Alabama, that did so sink her, as it is publicly known.

197 Third. To the third interrogatory, he saith that she was built in this city in the year one thousand eight hundred and sixty-two; and taking into account that this vessel having never suffered any severe gales, etc., before she was sunk, he believes that she not only continued to be worth the primitive value of building and fitting, but was even of more value at the time she was sunk; for she was then copper-sheathed and superabundantly equipped. She was greatly taken care of by her owner, on account of her excellent conditions and the large profits she yielded, and he did not spare any expense whatever in keeping her on a level with any vessel of this province.

Fourth. To the fourth interrogatory, he saith that, in his long life as a sailor and owner of several vessels, some built on his own account and others bought, and which he always employed in transporting passengers and merchandise from this port to America and other foreign ports, he has been able to acquire some knowledge of the approximate value of the Ninfa de los Mares. With said knowledge, he can affirm that this vessel, having never demerited during her service, could not be of less value than forty-two to forty-three thousand hard dollars, that represent forty-five thousand two hundred and sixty-eight five-franc pieces, leaving out the fractions; and this, with inclusion of all fittings. But taking

in account the brilliant and uncommon conditions of the vessel alluded to, and which deponent affirms to be such that he found very few to rival the Ninfa de los Mares amongst the various vessels he has seen in many Spanish and foreign ports which he has frequented, the amount mentioned would not cover her real value, as no experienced ship-owner would sell, without great inducements, a vessel that, on account of her fame and qualities, would render in her expeditions such constant and high profits.

Fifth. To the fifth interrogatory, he saith that he has mentioned Spanish hard dollars, the unity being equivalent to a French five-franc piece and one-nineteenth part of the same.

198 Sixth. To the sixth interrogatory, he saith that, taking into account the circumstances set forth in the fourth answer, he considers, without vacillation, that the losses suffered by the owner of the Ninfa de los Mares will not be indemnified by the payment of the amount which the witness has fixed as the intrinsic or real value of said vessel, because said amount does not cover the sacrifice of the personal work and supervision of the owner of a vessel pending the time she is building, nor the interest of his capital from the beginning of said building until the vessel is on her voyages; and as she sailed with such favorable conditions, the sinking of such a profitable vessel has deprived her owner of the profit of five or six thousand hard dollars, which she made every six months, or of the high appreciative value the vessel had, and which the owner could turn to account—

(Signed) JOSÉ BTE. GONZALEZ.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this sixth day of May, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Follows the deposition of the witness José Buenamuerte Gonzalez:

First. To the first cross-interrogatory, he saith that since the last two years he has filled his official position, and before this that of pilotage and the command of merchant vessels for several years.

Second. To the second cross-interrogatory, he saith that he has mentioned in the preceding article whatever he might now say to the points involved in the first, second, and third of this second interrogatory, and which previous answers may be understood to be here repeated. Respecting the rest, he asserts that the vessel was a little less than three years old when she was sunk; that she was employed in making voyages between these islands and America, taking freight and passengers and bringing passengers, domestic and colonial products.

199 Third. To the third cross-interrogatory, he saith that the deponent did not own any vessel during the time of the Ninfa de los Mares, but he did so before, and had no interest whatever in her.

Fourth. To the fourth cross-interrogatory, he saith that he refers to what he said in the previous fourth point, adding that in former days none of his vessels, which were the Isbel Segunda, built in North America, the Africano, the Negrita, and the Antoñita, was of the tonnage of the Ninfa de los Mares. He bought the first in Havana, the second in this city, and the third and fourth, he had them built in the dock-yards. From the knowledge acquired by these means, and with the information which he has received from intelligent ship-builders in this island, he has estimated the value of the Ninfa de los Mares according to this market price.

Fifth. To the fifth cross-interrogatory, he saith he reiterates what he has declared in the fourth interrogatory, adding that in his estimate he has included the vessel and everything belonging to her.

Sixth. To the sixth cross-interrogatory, he saith that he is positive, because he was present at the time that the Ninfa de los Mares left this port, taking passengers and freight, bound to the Island of Cuba, and that when she arrived there, as the cholera raged in these islands, she went to New York, with the same object of repeating her speculations by purchasing merchandise, which she intended importing to this island; and all the rest which is specified in this interrogatory is unknown to the witness, because the Ninfa de los Mares was not damaged in the hull or sheathing. When she sailed she was completely equipped and in the best of conditions. Regarding collisions, all what the Ninfa de los Mares suffered during her existence, until she was sunk at New York, were simply the damaging of her figure in the cut-water and bowsprit, once in this port and once in Havana, by chafing with other vessels whilst at anchor; said chafing' were of little or no consequence, and
200 quickly repaired, for which reason he has not taken them into account.

(Signed) JOSÉ BTE. GONZALEZ.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this eighth day of May, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Deposition of the witness José Mendosa Morales, produced and sworn on the twenty-third day of April, in the year one thousand eight hundred and sixty-eight, as above mentioned, and now examined this eleventh day of the month of May, of the same year, as follows:

JOSÉ MENDOSA MORALES, of Santa Cruz, of Palma, merchant, aged fifty-one years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the commissioners, doth depose and say as follows:

First. To the first interrogatory, he saith his name is José Mendosa Morales; aged fifty-one years; merchant; and has no official position.

Second. To the second interrogatory, he saith that he saw this vessel built, and was on board of her on various occasions when at anchor in this port, the last time being in eighteen hundred and sixty-five, when she was preparing for her expedition, which took place in the last-mentioned date, and from which she did not return, on account of having been sunk in New York.

Third. To the third interrogatory, he saith that said vessel was built in the years one thousand eight hundred and sixty-two and sixty-three, near Fort St. Charles, this place being selected as the most convenient, although more expensive on account of having to construct a new dock-yard, demolish walls, and rebuild them. This vessel not having suffered any damages in the short time she navigated, his
201 comparisons regarding the primitive state of this vessel and that which she represented in the year one thousand eight hundred and sixty-five, the last time he saw her, did not offer any difference, unless it was as more favorable at the second date, on account of being then sheathed and completely equipped and her excellent qualities being then publicly known.

Fourth. To the fourth interrogatory, he saith that owing to his commer-

cial acquaintances and to his own experience on the subject, besides the knowledge acquired in his travels through Spain, America, and foreign places, witness is well posted on the value of vessels, the more so from the practical experience in the country where at all times vessels have been built as of the same tonnage and with such thorough care as the Ninfa de los Mares. The expense incurred in building is ninety hard dollars per ton, according to which standard the total value of this vessel amounts exactly to forty-two thousand six hundred and thirty hard dollars, equivalent to forty-four thousand eight hundred and sixty French napoleons of five-franc pieces each.

Fifth. To the fifth interrogatory, he saith that the value of the Spanish hard dollar is one napoleon and one-nineteenth part of another.

Sixth. To the sixth interrogatory, he saith that the witness and other parties, of reliable authority, have personally and publicly remarked the excellent conditions of said vessel—such as quickness in her voyages, solidity, and good sailing qualities, with many other equally excellent circumstances; and for these reasons witness is sure that if her owner be paid the value he has already mentioned, he will not be indemnified more than two-thirds of his losses, because the Ninfa de los Mares had in sale a higher value than that of intrinsic and primitive cost, as is always the case when anything is of special merit, and also because she having been freighted and equipped by her owner to perform two voyages during each year, in each voyage having left a profit of five
202 or six thousand French napoleons during the two past years before she was sunk, the owner was thereby deprived of a high and certain profit on account of this unexpected accident.

(Signed) JOSÉ MENDOZA.

Examination taken and reduced to writing and by the witness subscribed and sworn to this eleventh day of May, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Follows the deposition of the witness José Mendoza Morales:

First. To the first cross-interrogatory, he saith he has no official position.

Second. To the second cross-interrogatory, he saith he refers to what already has been said, and adds that the vessel Ninfa de los Mares was two years at sea, and made her voyages to America.

Third. To the third cross-interrogatory, he saith that he has not, and never had, any interest in the Ninfa de los Mares, or any other vessel.

Fourth. To the fourth cross-interrogatory, he saith he has never purchased or sold vessels; that in regard to the value of the Ninfa de los Mares, and the circumstances taken by him into consideration in order to fix her value, he has already manifested what he has to state in the fourth interrogatory.

Fifth. To the fifth cross-interrogatory, he saith that he has valued her according to the prices in this market, and in said valuation he has taken into account everything appertaining to the vessel.

Sixth. To the sixth cross-interrogatory, he saith that he has neither heard, nor has there happened to his knowledge, any of the things referred to in this question. The Ninfa de los Mares, during her existence, only experienced two chafings in the foreship by other vessels being at
203 anchor, damaging part of her figure in the cut-water and bowsprit. She sailed for New York under her owner's command and on commercial business, said owner taking drafts and specie for tha

end. He was made to understand by certain threats of one of the crew that there existed a plot to do something to injure Dn. Nicolas de las Casas if he did not acquiesce to pay them their wages for the time they were at New York after she was sunk, but this threat was looked on by him with contempt.

(Signed) JOSÉ MENDOZA.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this thirteenth day of May, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Deposition of the witness José Miguel de las Casas Lorenzo, produced and sworn on the 23rd day of April, in the year one thousand eight hundred and sixty-eight, as above mentioned, and now examined this eighteenth day of the month of May of the same year above mentioned, as follows:

JOSÉ MIGUEL DE LAS CASAS LORENZO, of Sta. Cruz of Palma, proprietory, aged sixty years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the commissioner, doth depose and say as follows:

First. To the first interrogatory, he saith his name is José Migue de las Casas Lorenzo, aged sixty years, land-owner, and not holding any official position.

Second. To the second interrogatory, he saith that he knew the Ninfa de los Mares since the beginning of her building until she was launched; he had frequently been on board until the time of her last expedition, in the year one thousand eight hundred and sixty-five, not having returned to this port on account of being sunk in New York.

Third. To the third interrogatory, he saith that said vessel,
204 named the Ninfa de los Mares, was built in a dock-yard expressly constructed for her, near the forts on that sea-wall; that she did not experience any important damage during the short time she was afloat, which was two years and a few months. Therefore, the comparative value of this vessel at the time she was sunk and that which she had in one thousand eight hundred and sixty-five, when she left this port, did not present any decrease; on the contrary, she had been thoroughly equipped and sheathed with great care, and better improved in price, with the reputation of her good qualities.

Fourth. To the fourth interrogatory, he saith that deponent has draughted and built vessels for voyages on the high seas, and has made several voyages to national and foreign ports, having a decided inclination to vessels and their building, on which he has studied what he possibly could. He knows this branch of industry, and can affirm that the Ninfa de los Mares, her conditions being in all respects good, was worth, with her equipments, ninety hard dollars per ton, which represents the total value of forty-four thousand and odd French napoleons of five-francs pieces.

Fifth. To the fifth interrogatory, he saith that he has already stated the kind of money he has used in her valuation, and he wishes it to be understood that the hard dollar which he has specified is equivalent to a French napoleon and one-nineteenth part of another.

Sixth. To the sixth interrogatory, he saith that from what witness knew regarding the qualities of the Ninfa de los Mares, whose fame was notable on account of her swiftness, staunchness, and good sailing qualities, her owner

would not be indemnified of his property by being paid the value of the building and equipments, as appraised by witness, because said vessel was highly esteemed and had many solicitors for her purchase; furthermore, deponent, taking into consideration the profits that might have been made during the time elapsed since the sinking of the Ninfa de los Mares by the North American steamship to the present day, is
205 convinced that in each of the two expeditions which she yearly made, and might have made, her owner has been deprived *of*, in each expedition, of a profit of five thousand dollars, or nearly four thousand napoleons. That, in four voyages, would leave a total of sixteen thousand French napoleons.

(Signed) JOSÉ MIGUEL DE LAS CASAS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 18th day of May, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. S. Consular Agent and Commissioner.

Follows the deposition of the witness, José Miguel de las Casas Lorenzo:

First. To the first cross-interrogatory, he saith that he has no official position.

Second. To the second cross-interrogatory, he saith that in regard to these particulars, as he is again questioned, he repeats and holds as good what he has already manifested in the second answer; that he has nothing else to add, excepting that said vessel made her voyages to America, taking passengers and domestic products, she only being two years and odd months at sea when sunk in the port of New York.

Third. To the third cross-interrogatory, he saith that he has not, nor ever has had.

Fourth. To the fourth cross-interrogatory, he saith that of the vessels he has built he has only sold one, which he finished and launched in the coasts of the Island of Cuba; he has not bought or sold any other; and as to the reasons on which witness bases his calculations regarding the Ninfa de los Mares, he has already explained them in his answer to the fourth interrogatory.

Fifth. To the fifth cross-interrogatory, he saith that he has based his calculations and standard of valuation on the prices in this market, and has included everything appertaining to the vessel in the value he has assigned to her.

206 Sixth. To the sixth cross-interrogatory, he saith that he is undoubtedly positive that the Ninfa de los Mares did not experience any collision before she was sunk in New York, with the exception of two chafings, they being of little consequence and immediately repaired, and not having even the marks of that slight damage; that she went to New York without any object of repairs, but only for her commercial business, and all what may have been said on the contrary is merely an invention of bad faith on the part of some dissatisfied person, on the owner of the Ninfa de los Mares not being willing to pay (as he was not bound to) the wages to the crew of his vessel for time subsequent to her sinking, said inventions being cause of great trouble and costs of litigation to her owner.

(Signed) JOSÉ MIGUEL DE LAS CASAS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 20th day of May, 1868, before—

(Signed) FLOYD P. LAREMUTH,
U. Consular Agent and Commissioner.

Commissioner's report.

District court of the United States for the southern district of New York.

NICHOLAS DE LAS CASAS
agst.
THE STEAMER ALABAMA AND THE STEAM-tug Game Cock, their tackle, &c.

In pursuance of a decretal order made in the above-entitled cause, on the twenty-fourth day of October, A. D. 1867, by which, among other things, it was referred to the undersigned, one of the commis-
207 sioners of this court, to ascertain and compute the amount due the libellant for damages, by reason of the collision in the pleadings mentioned, and to report thereon to the court with all convenient speed:

I, John A. Osborn, the commissioner to whom the matter was referred, do report that I have been attended by the proctor for the libellant and proctors for the claimants of the steamer Alabama, and of the tug-boat Game Cock, and the witnesses; and have taken and examined the testimony offered in support of libellant's claim for damages aforesaid, and do find that there is due to the libellant as follows, to wit:

For total loss of the Spanish barque Ninfa de los Mares, taking her value at La Palma, her home port, in the currency of that country at the time of the collision, December 15th, 1865, thirty-three thousand five hundred Spanish milled dollars	$33,500 00	
Equivalent in U. S. legal paper money (taking the agreed value of the Spanish milled dollar at that date in the city of New York to be equal to one dollar and fifty cents of the U. S. lawful paper currency)		$50,250 00
Interest on the value of the vessel, to wit, $50,250, from December 15, 1865, to September 20, 1870, at 6 per cent		14,363 12
Making sum total of value of vessel, and interest thereon in U. S. lawful paper money		$64,613 12
There were on board of the Ninfa at the time of collision, and lost by her sinking, 213 Spanish doubloons, agreed value in U. S. lawful paper money	4,992 72	
208 Ship stores lost, valued at 100 doubloons, equivalent to	2,344 00	
Captain's watch and other personal property lost, valued at 56 doubloons, equivalent to	1,312 64	
Articles lost belonging to Barolomé Mathew, mate, worth 1,542 Spanish milled dollars, equivalent in U. S. currency	2,313 00	
Total amount of articles lost	$10,962 36	
Interest thereon from Dec. 15, 1865, to Sept. 20, 1870	3,133 40	
		$14,095 76
Making the sum total of damage, including interest, seventy-eight thousand seven hundred and eight and $\frac{88}{100}$ dollars		$78,708 88

I further report that the proof shows the Ninfa to have been worth, at the time of the collision, in the port of New York, fifty thousand dollars, and in my judgment or opinion, she was worth that sum anywhere where there was a market for vessels.

All which is respectfully submitted.

Dated New York, Sept. 20, 1870.

JOHN A. OSBORN,
U. S. Commiss'r.

MAN & PARSONS,
Proctors for Libellants.

(Endorsed:) U. S. dist. court, southern dist. New York. Nicolas de las Casas vs. the Steamer Alabama and the Steam-tug Game Cock, their tackle, &c. 19, 356. Commissioner's report. Man & Parsons, proctors for libellants. Filed Sept. 20, 1870.

209 District court of the United States for the southern district of New York.

THE STEAMER ALABAMA, HER ENGINES, &c., et al., *ads.* NICOLAS DE LAS CASAS.

The respondents and claimants of the steamer Alabama hereby except to the report of the commissioner, made under the order of this court, and filed herein on the 20th day of September, 1870, as follows

First. [In that said commissioner has taken and estimated the value of the Ninfa de los Mares, at La Palma, in the Canary Islands, the port where said vessel was owned, whereas he should have taken and estimated her value at the port of New York, where the disaster occurred.]

Second. [In that the said commissioner has taken and estimated the value of said vessel in the currency of La Palma, to wit, in Spanish milled dollars, and has found that the libellant is entitled to recover the equivalent of such value in United States legal paper money, amounting to $50,250; whereas he should have found that said libellant was entitled to recover the equivalent of such value in United States gold and silver coin, only amounting to $35,510.]

Third. [In that said commissioner has taken and estimated the value of said vessel at La Palma, at the time of the collision, at thirty-three thousand five hundred Spanish milled dollars; whereas he should have found her value not to exceed twenty thousand Spanish milled dollars.]

210 Fourth. [In that said commissioner has improperly allowed interest upon the value of said vessel as found by him.]

Fifth. [In that the commissioner has improperly found the value of the said vessel and interest thereon in United States paper money at the sum of $64,613.12; whereas such allowance could not properly exceed the sum stated as the value thereof in the libel.]

Sixth. [In that said commissioner has improperly found the said vessel to have been worth, in the port of New York, $50,000; whereas he should have found her worth, in said port, not to exceed $20,000.]

Seventh. [In that said commissioner has improperly found that in his judgment or opinion said vessel was worth the sum of $50,000 anywhere where there was a market value for vessels; whereas he should

have found that she was worth, at any such place, not to exceed $20,000.]

Eighth. [In that said commissioner has improperly allowed the value of Spanish doubloons in United States lawful paper money, estimated at $23.44 per doubloon; whereas he should have allowed the value of such doubloon in United States gold and silver coin, and estimated the same at $15.85 per doubloon; and that instead of allowing the value of 369 of such doubloons as the value of ship stores, watch, &c., at $8,649.36 in such lawful paper money, he should have allowed the same at $5,848.65 in United States gold and silver.]

Ninth. [In that said commissioner has improperly allowed the value of Spanish milled dollars in United States lawful paper money, estimated at $1.50 per Spanish milled dollar; whereas he should have allowed the value of such milled dollars in United States gold and silver coin, and estimated the same at $1.06 per milled dollar; and that instead of allowing the value of 1,542 of such milled dollars as the value of articles belonging to the mate, at $2,313.00 in such lawful paper money, he should have allowed the same at $1,634.52 in United States gold and silver.]

Tenth. [In that said commissioner has improperly allowed in-
211 terest upon the value, as found by him, of doubloons, ship's stores, watch, and other property on board said vessel; and, also, in that he has also improperly allowed interest upon the value of such articles, notwithstanding the fact that he has allowed the United States legal paper-money value thereof at the time of the disaster, estimating the doubloon at $23.44 and the Spanish milled dollar at $1.50 in such paper-money, while the present rate of the doubloon, in the same money, is not to exceed $18, and that of the milled dollar not to exceed $1.20; whereas, under such circumstances, he should not have allowed interest on the value of the articles on board.]

Eleventh. [In that said said commissioner has allowed the sum-total of damages, including interest, at $78,708.88 in lawful paper-money; whereas he should have allowed it at a sum not to exceed $25,000 in the same currency.]

Twelfth. [In that said commissioner has allowed the sum-total of damages, including interest, at $78,708.88, in lawful paper-money; whereas he should not have allowed interest, if such currency, as its value stood at time of disaster, is to be taken as the measure of damages.]

Thirteenth. [In that said commissioner has allowed the sum-total of damages, including interest, at $78,708.88 in lawful paper-money; whereas he should have allowed such sum-total at $55,377.31 in United States gold and silver coin, on the basis of value adopted by said commissioner, namely, value at home port, to the end that a final decree might be entered for the last-named amount, either specified to be paid in gold and silver coin, or without such specification, as this court shall direct.]

Dated September 23d, 1870.

OWEN, NASH & GRAY,
Proctors for Claimants of Steamer Alabama.

(Endorsed:) U. S. dist. court. The steamer Alabama, her en-
212 gines, &c., & al., ads. Nicolas de las Casas. Exceptions to commissioner's report, (1st.) Owen, Nash & Gray, proctors for claimants of the Alabama. 19, 356, 382. Filed September 24th, 1870.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Thursday, the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and seventy:

Present, the honorable Samuel Blatchford, district judge.

NICOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA AND THE STEAM-TUG Game Cock, &c.

This case having been heard on exceptions taken by the claimants of the Alabama to the commissioner's report herein, and in opposition thereto on the part of the libellant, and argued and submitted by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered by the court that the first, fourth, eighth, ninth, and tenth of said exceptions be allowed; that that part of the second exception beginning with the words "in that," and ending with the figures "$50,250," be allowed and the remainder of said exception disallowed; that that part of the third exception, beginning with the words "in that," and ending with the words "thirty-three thousand five hundred Spanish milled dollars," be allowed, and the remainder of said exception disallowed; that that part of the fifth exception beginning with the words "in that," and ending with the figures "$64,613.12," be allowed, and the remainder of said exception disallowed; that that portion of the sixth exception beginning with the words "in that," and ending with the figures "$50,000," be allowed, and the remainder of said exception disallowed; that that part of the seventh exception beginning with the words "in that," and ending with the word "vessel," be allowed, and the remainder of said exception disallowed; that that part of the eleventh exception beginning with the words "in that," and ending with the word "money," be allowed, and the remainder of said exception disallowed; that that part of the twelfth exception beginning with the words "in that," and ending with the word "money," be allowed, and the remainder of said exception disallowed; and that that part of the thirteenth exception beginning with the words "in that," and ending with the word "money," be allowed, and that the remainder of said exception be disallowed.

213

And it is further ordered that said report be set aside, and the case referred back to the commissioner to ascertain and compute the amount of the damages sustained by the libellant by reason of the collision mentioned in the pleadings, upon the evidence put in on the former reference, and such further evidence as shall be offered by any party, and upon the principles stated in the opinion of this court upon such exceptions.

SAMUEL BLATCHFORD.

(Endorsed:) Vol. 19, Nos. 356, 382. U. S. district court for the southern district of New York. Nicolas de las Casas vs. the Steamer Alabama and Steam-tug Game Cock, &c. Man & Parsons, pr. for libellant; Owen, Nash & Gray, proctors for clts. Alabama. Order allowing exceptions and setting aside report and re-reference, &c. Filed the twenty-seventh day of October, 1870.

214 *Testimony on second reference.*

U. S. district court, southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, HER ENGINE, tackle, &c.

DECEMBER 8*th*, 1870.

Pursuant to order of court referring the above matter, on reference, back to undersigned commissioner, to take further proof on the question of damages, upon the principles stated in the opinion of the court, upon exceptions to report of commissioner, filed Sept. 20, 1870, and upon notice for reference under said order.

Present, proctors for the claimants, and proctors for the libellant, and witnesses. The libellant calls as witnesses the following-named persons:

AMBROSE SNOW, sworn, says:

I reside in Brooklyn; business, shipping and commission, and has been for 20 years. My firm is Snow & Burgis. I am a vessel-owner, and have been for 20 years owner in a great many vessels, and have all this time been familiar with the value of vessels in the port of New York.

Q. (A description of the barque Ninfa is read to witness, read from the deposition of Miguel de las Casas, from 2, J. A. O., to 3, J. A. O., in the margin of the deposition, and from 4, J. A. O., down to 5, J. A. O., in the margin.) In December, 1865, what was the value in the port of New York of such a vessel, assuming her to have been built in the year 1862–'3, and to have received ordinary use and wear and tear?

215 (Objected to, on the ground that the witness has not shown himself competent to answer the question, and also that the description is not sufficient for the witness to base his opinion on it; overruled.)

A. My idea is that she would have been worth from $60,000 to $70,000.

Cross-examined by Mr. Bates:

That is about as near as I can come to the value of a vessel of that description, because the value varies, as some vessels are suitable to a particular kind of trade, and are really very valuable for that trade, and might not bring their value if a person did not apply for a vessel for a particular trade.

The Ninfa was adapted for a good many kinds of trades; her cabin was fitted to carry passengers. Barks fitted up in this port for the passenger trade do not bring high price, in comparison with other vessels.

My judgment is that if the Ninfa had been offered for sale in December, 1865, in the market, she would have brought from $60,000 to $70,000. I never saw her; make up my opinion from the description read to me.

I think we purchased some vessels about December, 1865. We bought the bark Lone Star about that time, in Boston; purchased the ship Corsica at Thomaston, Maine, about that time.

Purchased the Lone Star for Joseph Nicherson; bought one-quarter of her in our own name; bought her for a captain; bought it for our own interest and kept it; about 400 tons; built in Maine; she was 6 or 7 years old at the time. A quarter of a vessel sells for less in propor-

tion than the whole vessel. There might be circumstances under which a quarter interest might sell for more than a whole vessel.

We purchased the Corsica from the builder. She was a new vessel; purchased an eighth interest.

We sold vessels about that time, but never sold abroad. I think I can't call to mind any particular cases of sales; my mind is not now refreshed.

A vessel built of t*eke* is much more valuable than built of white
216 oak or of soft wood of which vessels are built at the East. A vessel built of t*eke* is almost the same difference in value as would be between vessels built of iron and soft wood.

Soft wood is spruce and hacmatack, birch, elm, beach, white pine; yellow pine is soft wood, but not eastern wood.

In the description of the Ninfa, I don't know the name of the wood now. I never saw the wood; don't know whether it is a hard or soft wood; never saw a vessel built of her. I have no personal knowledge where this wood grows.

It was from the description of the wood by name as much as any other description that formed my opinion. The words in the description "such a vessel would last for 50 years" had something to do in making up my mind. I got the impression that she was a first-class vessel, lavishly fitted up. I got the idea from the description that she was built of a kind of wood of a very lasting material; a lasting wood is not necessarily a very hard wood.

My idea was from the description that she was built of hard wood rather than soft.

If I knew the kind of soft wood the vessel was in fact built of, it would make a difference in my opinion.

If she was built of pine, my estimate would be less.

Adjurned to Friday, December 9, 1870, at 3 p. m.

FRIDAY, *December* 9, 1870.

Proctors for respective parties present, pursuant to adjournment, and Ambrose Snow continues on cross-examination:

I think the tonnage, from the description of the Ninfa, was 450 American tons; a vessel 129 feet long, with the usual width, say, would be about 500 tons. I don't know the distinction between Spanish and English tonnage; don't know how the Spanish tonnage is measured. I took her tonnage from her dimensions, which I made into English feet;
don't know the difference between a Spanish foot and an English
217 foot; don't know how many English feet there are in 129 Spanish feet, nor how many there are in 33 or 18 Spanish feet. A vessel 129 feet keel and 33 feet beam would indicate 500 tons, registered tonnage, old measurement. The new measurement is supposed to be the most accurate to get the actual carrying capacity; the object of the new measuremant is to give the actual cubic capacity of the vessel. The old system of measurement was more like the carpenters' measurement, substantially the same. The carpenters took the widest part of the vessel, and the Government the broadest part above the main wall. In the summer of 1865, if vessels were bought and sold, they were usually bought and sold by the old measurement; that which is usually expressed on the papers. This new measurement was adopted two or three years ago. It was quite common to pay so much per ton. We paid $13,250 for one-eighth for the Corsica, 1,300 tons, and a new vessel. I also took into consideration that the Ninfa was completely equipped, as well as lavishly furnished. I gather, from the description, that she should rank A 1, or

A 1½, at least. There is nothing in the description read to me that indicates the number of her timbers and beams, nor anything that indicates the details of her lavish fitting up and furniture, nor her particular model, (I guessed at the model,) nor her sailing qualities, but took them to be fair. I judged her carrying capacity to contain 2,500 boxes of sugar, as stated in the deposition. I am acquainted somewhat with that character of cargo. The boxes of sugar I took to be ordinary Havana boxes sugar, weighing from 400 to 450 lbs. I think a box of Havana sugar is 4 by 2 feet by 1½ feet—about 12 cubic feet in a box.

Q. In estimating the number of tons of a vessel, supposing her to have certain dimensions, length, breadth, depth of hold, how many cubic feet do you allow to a ton?

A. I can't answer that question.

218 Q. You say that the Ninfa, from her dimensions as contained in the deposition, which you assume to be English feet, would be over 600 tons. State in detail how you arrive at your conclusion.

A. From a calculation made in my head at first, I said the tonnage of such dimensions would be about 500 tons, but, making it on paper, it would be over 600 tons. I arrive at it as follows: I assume that if she was 129 feet keel, she must be 130 feet the measuring line. Then I take three-fifths of breadth of beam and subtract from the whole length; then I multiply the breadth of beam, 33 feet, by that remainder; then I take half the breadth of beam for the depth of hold; then multiply length, breadth, and depth together; and then divide by 95, and the result is the tonnage. This is no indication of the cubic capacity of the vessel; this is on the outside; that would depend upon her build, and her depth of hold, which might be greater than half her depth of beam. Experts would tell, knowing her model, a very close estimate of her cubic capacity. I presume I could give it if I knew her model. My calculation, before I divided by 95, produced feet, cubic feet, and, reducing these cubic feet to tons, I divided by 95. In estimating this tonnage, I did not assume any particular model; it may be sharp, or it may be full. My calculation will result in the actual Government tonnage. This was the actual method of the Government measurement up to within two or three years. The capacity is the room a vessel has on the inside. This method I have spoken of is frequently very wide of the mark in getting at the actual cubic capacity, and sometimes it is quite correct; it would come nearer being correct when the vessel was moderately sharp.

Q. Assuming this vessel had an extreme draft of 20 feet when loaded, and a draft in ballast of between 14 or 15 feet, what would that indicate to you as to her model?

A. A vessel with sharp bottom, sometimes called "long-legged."

Redirect:

My valuation was upon the assumption that the Ninfa tonned 450 tons, old measurement.

219 Q. Assuming her to have been 118 English feet long, 30 English feet breath of beam, and 16½ feet depth of hold, what would have been her tonnage, old measurement?

A. 473 tons and a little over; that calls her depth of hold 15 feet, but the increase depth of hold would not affect her tonnage.

Recross:

Q. Assuming her to have been 113 English feet in length, 30 feet beam, what would be her tonnage?

A. 450 tons, 30 feet and 113 feet as dimensions, would strike me as

out of proportions. I was never at the Canary Islands; never saw one which had been built there. Assuming her to be 450 tons, and her to be worth $60,000, she would be rated as worth $133.33 per ton; to value her at $70,000 would be $155.55 per ton. If she was coppered and in fine condition, and built of such lasting wood as represented, with ordinary care and use she would be worth as much as when new. I assume she was not coppered when she was new. The deposition does not state when she was coppered—when new, or after using her a time. A vessel when new is usually worth more than when three years old, with ordinary usage; there is some depreciation. My impression is that the Ninfa would have sold in summer of 1865, at the New York market, from $133 to $155 per ton; it is now my judgment.

Redirect:

We usually run a vessel a year before coppering her.

AMBROSE SNOW.

BENJAMIN J. WENBERG, sworn, says:

My business is ship-broker; buy and sell vessels; freight them; has been for 20-odd years in city of New York; transactions have been extensive; bought and sold a great many vessels, some steamers. I have been familiar with the value of vessels in the port of New York. I have heard the description of the Ninfa as read to Captain Snow.

Q. In December, 1865, what was the value in the port of New York of such a vessel, assuming her to have been built in the year 1862-'3, and to have received ordinary use, wear, and tear?

220 (Objected to on ground of incompetence, as the witness has not shown himself competent, and also the description not being sufficient for a witness to base judgment upon, and it is not the best evidence of the description in the case; overruled; exception.)

A. A vessel like that was worth between $60,000 and $70,000, judging from the description as read.

JANUARY 31, 1871.

Benjamin J. Wenburg cross-examined by Mr. Bates, proctor for the claimant:

I never saw the Ninfa. I think her tonnage was about 500 tons American measurement, new tonnage—present custom-house tonnage; 477 Spanish tonnage indicates, I think, about 500 American. I am not acquainted with the Spanish method of measuring vessels; I am aquainted with the American method—old measurement. I don't know how the present custom-house tonnage is arrived at. They estimate, I believe, from the capacity of the vessel—actual measurement in cubic feet. Vessels generally have a register showing the tonnage; they are bought and sold by that register. I make a difference in my estimate of the value of about $10,000. I said her original cost would be from $60 to $70,000. It is the custom to measure the vessel by measuring the house on deck, where she has room for cargo. I don't know that the law of Congress is different. I think I sold barks in 1865; I cannot tell without looking at my books; there was not a year but that I some vessel. I sold the bark Annie, the bark Sophia, the bark La Seguina, bark Albertina, bark Azelia, bark Rapid, and a good many more. The bark Sophia I sold twice; once from some one in Baltimore to Morewood & Co., New York, in 1863, I think. The Annie I sold to a Spaniard, living in Spain. I think that was in 1864. She was owned by a

captain in Long Island. The barks Albertina and Rapid belonged to Hargous & Co., New York, sold to Boston people. Roberts & Rydalt bought the Albertina; Mathew Bartlett I sold Rapid to. Some of the other
224 sales were since 1865. The Albertina and Rapid were sold since the war. The Rapid was 295 tons, single deck, cabin on deck—old tonnage; the Albertina was 315 tons old measurement; Sophia was about 300 tons; the Annie was about 400 tons; the Azelia was about 295 tons, old tonnage; all single decks except the La Seguina; she was of 350 tons. I had full description at the time I sold them. I have no description in my possesion now, but it can be had at the American Lloyds. I kept no memorandum. I received 2½ per cent., and my book will show that; we consider these transactions buying and selling. On the Annie and Sophia we received 2½ per cent. from the purchasers and from the seller; the terms were cash; the Annie was sold for $22,000; the Sophia was sold the first time for $11,000; second time for $22,000. Vessels were in greater demand during the war than they were before. The Azelia sold for $17,000; the Albertina sold for $13,000; the Seguina for $18,000; it was an American vessel under foreign flag; this affects the price in New York. I cannot give the exact percentage of difference on such account which would be on such vessels; it depends very much on circumstances. My books, I think, will not show the dates; they will only show the commission. I kept no account of the names of the vessels. I think I can give the date of the sales of the Annie and Sophia. I cannot give the dates of the others. I shall furnish to the commissioner these dates. There is something in the description which indicates the model of the vessel. I judge therefrom that she was a medium sharp vessel, sharp at both ends, with good carrying capacity; that is, to sail well and have good carrying capacity. (Witness examines the description read to him, and indicates the following as having formed his opinion as to the model of the vessel.) I judge from the dimensions of the vessel, and from the general knowledge I have of vessels built at the Canary Islands. There is nothing in the deposition which indicates her sailing qualities. From her depth
222 of hold I judge her draught of water; I don't think such a vessel will draw less than 16 or 18 feet deep loaded; she might draw 8 or 10 feet without load, according as she is built. I think she would draw 12 feet light—extreme; she would draw 14 feet with ballast to go to sea. If she would draw 20 feet loaded, it would indicate that she is long-legged; long-legged are the better sea-boats. I gather from this description that she was an extra built vessel as to timber, and in every way, rating A 1; they do rate a wooden vessel A 1 now. I think she would rate A 1*; a double deck vessel would rate A 1 with a star. I have never been at Canary Islands. I have seen vessels built there. I have seen vessels that were said to have been built there. I have not seen any of late; cannot remember the name of any, and I have seen at least three Spanish vessels within the last two months. I don't know whether these were Canary Island vessels. I have not seen the kind of timber she was built of. The téa is considered equal to teak wood, I always understood. I have no personal knowledge of it, any more than I have of teak wood; all I know that both are considered the best kind of wood to build a vessel—very expensive here. Teak is a very hard wood—wood that will last a long time. It grows in India, I believe; a good deal harder than mahogany; a wood I never heard of rotting. It is unusual to build vessels all of pitch-pine. If the vessel had been built and furnished as that vessel was of white oak and pine, on the 15th of

December, 1865, she would have cost as much to build her here in New York, if not more, as if she would have been built of téa.

Q. Assuming that this vessel was built of pitch-pine, and not téa or teak, would that fact affect your judgment of her value at this port on the 15th December, 1865?

A. Certainly, it would; I should consider the pitch-pine vessel worth less, even though it cost as much; it would be 20 per cent. less; perhaps even more than that.

FEBRUARY 17, 1871.

223 I consider spruce the poorest material for a ship's timbers; all the soft woods are the poorest kinds for timbers. There isn't a great deal of difference in them. I shouldn't want to build a vessel of any of them to have it anyways durable. I don't believe there was ever a vessel built of pitch-pine of any size to go to sea. I don't include pitch-pine among those soft woods.

Q. What, in your judgment, would have been the market-value of the Ninfa in New York, on the 15th December, 1865, assuming her built of pitch-pine?

(Objected to.)

A. It would be hard for me tell, as I never saw a pitch-pine vessel of that size, all pitch-pine. I never brought or sold one.

I did not examine the timbers of the Canary Island vessels that I have seen; have never seen the tea to know it; have heard ship-carpenters say that the tea is a very durable wood; don't remember who; have heard the same expression concerning teak wood—that both were very hard and durable woods, and the best that could be put in a vessel if anybody could afford to pay for them. I have got the impression from this talk I have heard that tea and teak are one similar wood as far as durability is concerned. I have seen teak, so called. That is a very hard wood like tea. Nothing of the nature of any kind of pine, very different. In my estimate of the vessel I have allowed for the nice mahogany cabin, furniture, &c., at least ten per cent., or $6,000 or $7,000; don't know her owner; had no business relations with him. I think she was worth in New York on the 15th December, 1865, $130 per ton. I know vessels about that time to cost more. Bark Joseph Eneas was one. She wasn't sold. She was lost at sea. I speak of her cost to build.

Q. Name a single vessel that sold for $130 per ton, and state what you know and not what you have heard.

A. I cannot name one, of my own knowledge, that I sold, as I did not sell any of those high-priced vessels.

Q. Name one that you sold for $100 a ton or over.

224 A. Yes; I think I sold the schooner Mary S. Lunt, about four years old, for about $100 per ton; couldn't say whether new or old measurement; think her tonnage was about 112 tons; sold her for $12,500. Captain Brown and Charles Lunt of Newburyport owned her; sold her to Captain William Simmons of Granada, West Indies. I did not sell any barks at that rate. They were mostly second-handed vessels that I sold. The Sophia I sold in 1864 for $22,000. I had sold her in 1862 for $11,000. She was 300 tons, a single deck. She was not a first-class vessel, and wanted repairing. I sold the Anna the same day I sold the Sophia, and at the same price. This was September, 1864, or 1865. Cannot state the dates of the sale of any of the barks I have mentioned. The La Seguina, I think, I sold about two months before I sold the Sophia. I sold the schooner Mary S. Lunt about

eighteen months ago. She was about four years of age. These vessels I mention were not built of pine.

Redirect:

In December, 1865, pitch-pine was a very costly wood, as costly as white oak or any other material for building vessels. The vessels the prices of which I stated on sales by me were none of them as good as the Ninfa, according to the description of her. They were very differently fitted up, and of different material. They were all the way from four up to ten or twelve years of age. Those I have mentioned, except the schooner, were from eight to twelve years of age; that is, to the best of my knowledge now. Most of them wanted new and thorough repairs on them to send them to sea. I knew the bark Idaho. She was built about six years ago. Her tonnage was 741 tons, single deck.

Q. What was her value?

A. $60,000.

Q. Do you know what she cost?

(Objected to.)

A. $62,000, about. Know the brig Edwin Rowe. She was built in 1864. She was about 226 tons. Her owner told me she cost $40,000. (Objected to.) Joseph Eneas was one of her owners. The Panama Railroad Co. owned the Idaho.

225 Recross-examination:

The Edwin Rowe has never been sold. The Idaho was sold about two months ago; Tucker & Lightborne bought her; don't remember what she brought; I believe about $20,000; I know it was in that neighborhood. These vessels were built I suppose, of oak. They are nice vessels, I know—first-class vessels. Pitch-pine was a very costly wood in December, 1865, on account of its scarcity, on account of the war. Because pitch-pine was costly, it would not make a vessel better built of that wood.

Redirect:

There has been a large decline in the price of vessels since the war closed. It has been gradual down to the present time.

JANUARY 12, 1871.

Pursuant to adjournment, parties present. Evidence for libellant continued.

WILLIAM D. GOFF, sworn, says:

I am of the firm of C. Marti & Co., consignees of the Ninfa. We are commission merchants, receiving large importations of sugars, sugar-canes in boxes and hogsheads principally. This has been the case for the last twenty years, ever since I have been in business as clerk and principal. A box of sugar is 42 inches long by 20 inches each way. They vary, except as to length—sometimes a little wider and less deep, and sometimes a little deeper and less wide, but must always be equal to the contents of a box 42 inches long by 20 by 20 inches.

Q. Assuming that the Ninfa had carrying capacity under deck for 2,500 boxes of sugar, not including her cabins, how many tons of 40 cubic feet each would she carry?

A. 609 tons, exclusive of her cabins.

Cross-examination suspended for the present.

Adjourned to Thursday, January 17, 1871, at 3½ p. m.

Direct examination continued February 17, 1871:

We have Spanish vessels consigned to us. They are measured by the U. S. Government when they arrive here, in order to charge tonnage dues; their tonnage thus taken is about 10 per cent. increase; a Spanish vessel of 500 will register 550 American, about.

226 Cross-examination:

I get this information from some vessels that we have had consigned to us; had one, the Nueva Barredos, another the José Barredos, a schooner. I saw their registers myself, the Spanish registers. They are not in port now; they have gone to sea; did not see the American register. I paid tonnage tax on that at the custom-house. (The witness corrects, and says he did see them in both instances.) It was a receipt for so many tons, at so much a ton; was signed by a deputy collector, I think, or the official who alwas signs; that is all I know about it. I did not see any one measure. I received notice from the measurer that he would have to measure her. Whether they actually measured what the receipt said they did I do not know; I only know what the receipt said. I was on board both these vessels last month; they were measured some time last month; cannot give their date. On the schooner there was not a deck-house, nor on the barque. We never had in our possession her (the Ninfa's) register; never saw it. I heard the captain lost it; that is my impression now; don't know whether copies are kept in the home port or not; know nothing about Spanish measurement personally. The forty cubic feet to a ton is measurement tonnage. Captain Las Casas came directly to us after the disaster. I took the captain down to Johnson & Higgins, average adjuster. I think they made out an English protest; my partner made out a Spanish protest; my impression is the protest was merely noted in their book, but was never extended. The Spanish protest was an extended protest. I saw it. It is my impression that the captain sent it to his owners. Marti & Co. employed Captain Merrit, of the Coast Wrecking Co., to attempt to raise the wreck. We made the contract with him; we agreed to pay him thirty per cent. on the valne after she was raised in her damaged state. I think Mr. Parsons has that contract. There was no limitation which it was not to exceed. He went down and reconnoitred. He made the

227 contract before he went down, and after he had gone he tried to back out of it. I tried to persuade him to go to work. It was about five or five and a half o'clock in the evening of the day after the collision that I made the contract. It was made out by me on a slip of paper, which was signed by Captain Merritt and by C. Marti & Co.; the captain did not sign; we signed as consignees and agents. I kept the slip of paper—the contract. I do not think Merritt had a duplicate. It was made in Captain Merritt's office. I took it down to our office, and put it in the safe. I think that either we have it or Mr. Parsons has it.

(Paper shown witness, who says that is the contract made with Merritt for raising the vessel; put in evidence, and marked "Claimant's Ex. No. 1, February 18, '71.")

I don't know when Captain Merritt first went down to the wreck. The first intimation I received of Captain Merritt not performing his work were his acts, his not going to work. I think it was Saturday evening that I made the contract, and he agreed to take charge of the wreck at once, to send down and place a light on the masthead, which was out of water, and to go to work as soon as he could, which he promised me would be on Monday. He did not go to work on Monday. He sent some one down to take charge of the wreck the same evening of the contract.

I went up to Captain Merritt's office on Monday morning; learned that he hadn't sent down the derrick; saw Captain Merritt himself. He pleaded that he couldn't, on account of the snow and ice in the river; that was his excuse then. I then asked him to extend out a formal contract, of which this was a memorandum, as he had agreed he would, and send it down to our office that same day; he did not. I solicited it of him for about half a dozen times in about as many days. He constanty promised me that he would send it down to our office; he didn't do it. I found he was not going to do it, and that he wouldn't give me a contract; and

I then went to Mr Parsons with this memorandum. I knew it was
228 a contract. It would have been more satisfactory to me to have a fuller contract, but after Mr. Parsons told me this was enough I never asked for another. I think at the time I came to Mr. Parsons, Captain Merrit had a derrick down. I wouldn't swear whether it was before or after. I can't tell when I consulted Mr. Parsons. My impression is that I consulted Mr. Parsons after Merritt had had a *a* derrick on the spot. I came to see Mr. Parsons on or about the 29th of December, in order to compel Captain Merritt to perform his contract.

(Paper shown witness, who says Mr. Parsons wrote a letter to Merritt. This is the draft of that letter; put in evidence, marked "Claimant's Exhibit No. 2, February 18, '71.")

The captain of the Ninfa contended from the first that Captain Merritt was endeavoring to back out of his contract. On Monday, when he wasn't at work at his vessel, the captain began to suspect. Captain Merritt has told me previous to the letter of December 29th, that he has expended $2,500, and no derrick could raise her, and that she could not be raised except with scows, and she could not be raised with scows until spring. He said the reason why she could not be raised was that she was deeply imbedded in sand; said nothing about her ballast.

At the time the contract was signed Captain Merritt said he didn't want to see the Ninfa; that he had seen her pilot and the captain of the Game Cock, and they had told him about her, and he knew all about her. He enquired whether she had cargo or was in ballast. The captain told him she was in ballast. Captain Las Casas told Merritt, in answer to a question, about how much ballast there was in her. I think he told him between one and two hundred tons; think he told Captain Merritt how many doubloons there were aboard.

We kept on with Captain Merritt until spring, when he made two further efforts to raise her with scows. He didn't succeed. He then told us

outright that he would do nothing further. He had spent $14,000
229 in trying to raise her; and she was very deeply imbedded in sand; and she would be worth nothing when raised; the power necessary to raise her would pull her to pieces.

Between the 16th of December, 1865, and the time Captain Merritt, (the Coast Wrecking Company,) abandoned attempts in the spring, I made no agreement with any one else to endeavor to raise her. I went to Johnson & Higgins and asked them if there was any party could raise, and they told me there was only one other party in that business; that was the Columbian Coast Wrecking Company. They (Johnson & Higgins) were new, and hadn't the materials to raise her, and couldn't do it. I went to see them; they told me they couldn't do anything until spring, on account of the ice in the river. I went to see, about the month of January, during the early part; made no other efforts to get her raised by other parties until after Captain Merritt abandoned; never paid Captain Merritt (the Coast Wrecking Company) anything for his trouble; never agreed to pay him anything unless he got her up.

I made a contract with a man by the name of Beers after Merritt abandoned, in the spring, to endeavor to save the specie; made no other efforts between the 16th of December and the spring, except what Captain Merritt made. Beers discovered some few doubloons. When Capt. Merritt told me that he would not proceed further with the work, I tried to make a bargain with him to save the specie on salvage. He said he wouldn't do it, for a diver would risk his life going down there. Then tried to get the Columbian Co. to raise the vessel; paid them $250 to examine her. They went down and examined her. I went with them. This was in the month of March, or April, or May, 1866. They wouldn't raise her on salvage; they would only contract for a stipulated sum; I think it was $10,000. I wouldn't give it. We made them a proposition to pay them that, if they would agree that the vessel would have no damage except what the steamer did; that is, that they wouldn't damage
230 her in raising her. They wouldn't do that; they wouldn't stipulate anything at all about the condition she should be in; so that fell through. I asked them to save the specie on salvage; said it couldn't be done; made no agreement; they wouldn't do it. After this made the agreement with Beers, who was a man of no responsibility. He went for salvage; I agreed to give him fifty per cent. He went down there on three or four occasions with different divers, and they wouldn't go into the cabin. The last man, however, went into the cabin and found a purse on the floor with some few doubloons in it. The captain told him exactly where the specie was, but he said he couldn't get at them; he got some gold sleeve-buttons and a quadrant. The captain had a letter of credit on us, with orders to load the vessel for him. That letter came by mail from the consignees of the Ninfa in Havana, Antonio Lerpa & Co. It was merely a request that whatever deficiency there might be we should advance the captain on their credit and for their account. It was the usual way of doing business, and it was on that request that we made the advances. The captain did not leave money with us. The two vessels mentioned by me, which I gave the measurements of, were Spanish vessels; they were not Canary Island vessels; the cabins of both were trunk cabins; they are partly below and partly above the main-deck. I do not know whether in the Spanish register of those vessels those cabins were measured or not, nor whether they were measured here by the U. S. measurer. I do not know wheher the same space was measured by both Spanish and American measurers. I do not know anything about the two systems of measurement.

Redirect:

Beers recovered nine doubloons, according to my best recollection. After he recovered them I made a contract with him to raise the vessel on salvage by some new system of air bags. He tried and failed. Since then have done nothing about it, being informed by both companies that it was impossible to raise her as a vessel. I then made a contract with a person to save what he could; he never saved anything.

231 Recross:

Never paid Beers anything for his attempts to raise her.

FEBRUARY 21, 1871.

RICHARD POILLON, recalled by claimants of the Alabama, testified:

Q. On whose description of the Ninfa did you testify as to her size and value—that of Miguel, the master, or of Nicolas, the owner?

A. It was that of Miguel, the master.

Q. You say you know the wood of which she was constructed; state

what the name of that wood is, and where you acquired your knowledge of it.

A. All I know is from the captain's testimony.

Q. Do you mean that part of his testimony in which he speaks of the wood as very durable?

A. Yes, and as being used in vessels built in that country.

Q. Did you ever use the wood in building or repairing vessels?

A. No, sir.

Q. Did you ever have personal knowledge of its being so used here?

A. I have not.

Q. Do you know whether it is a pine or an oak?

A. I presume it to be a species of oak, from the captain's testimony.

Q. You state that your estimate of the Ninfa's value was, at the time of her loss, $105 per ton; would it affect her value had her timbers in fact been pine?

A. It depends upon the character of the pine, and whether a natural growth, and also whether the same weight of material was put in.

Q. You state that such a vessel, 129 feet keel, 33 feet beam, and 18 feet depth of hold, Spanish feet, would measure about 609 tons, American carpenter's measurement; please state your rule for ascertaining that tonnage.

A. I first reduce the Spanish feet to English feet, allowing 11½
232 inches English to the Spanish foot, then multiply the length of keel at half scarp, (that is the connection of the keel to the stern.) I took 129 feet Spanish for the keel to depth of hold and that by breadth of beam; divide by 95, that will give the tonnage.

There are two values for a vessel; one the intrinsic value on her merits as a vessel, and the other her value as classified by the underwriters. I refer to the intrinsic or real value when I speak of value.

When I estimate value I take the cost of the vessel and allow the depreciation by age and use, and also take into consideration the increase or depreciation of vessels on account of the state of trade.

Q. Is the rule you have given for ascertaining tonnage a statutory rule, or a rule of custom?

A. Custom; but it is not strictly adhered to by all builders. There are different modes of ascertaining carpenter's tons.

Q. Is it the most common rule?

A. That I am not prepared to say; it is the rule we adopt on small double-decked vessels.

Q. Suppose this vessel was a medium clipper, drawing 20 feet loaded, and between 14 and 15 in ballast of 100 to 200 tons, what would be the difference between your measurement and American new measurement, registered?

A. It would be impossible to answer that without seeing the model of the vessel.

Q. What model of a vessel would it be that would diminish one-half?

A. It would be an extreme sharp vessel, of the pilot-boat or yacht style.

Q. What percentage would it decrease in a vessel which was "ordinary" model?

A. I should think about 25 per cent.

Q. What percentage for a "full" model?

A. If the houses on deck of an extreme full vessel are not measured, probably not more than 15 per cent. An ordinary freighting vessel is supposed to be a full vessel.

233 Q. What percentage for a vessel of medium clipper form?

A. I would suppose 30 or 35 per cent.

Q. If I understand your rule correctly, the dimensions of the Ninfa, as contained in the master's deposition, will work out about 800 tons, yet you estimate her 609 tons; why do this?

(Withdrawn, the assumption being incorrect.)

Q. In your estimate of the cost of the Ninfa, how much do you allow for the handsome cabin and other passenger accommodations, and the outfits and embellishments connected?

A. I am not prepared to say at this moment.

Q. Are you as to her extra outfit and equipment, and the extra finish and ornamentation?

A. No, sir; I appraise her as a vessel fitted in an unusual manner; as to her class, it is my impression she would rate with the underwriters A ; but perhaps not better than A 1¼.

MARCH 3D, 1871.

Proctors for respective parties present.

EVIDENCE FOR CLAIMANTS.

GEORGE W. BROWNE, being duly sworn, deposes and says:

I reside in Brooklyn. I am an inventor. I was superintendent of N. Y. Submarine Wrecking Co. in 1866 and part of 1867.

I am acquainted with the harbor of New York; have been a seafaring man for thirty-six years; was superintendent of this wrecking company for eight months. I have a general acquaintance with wrecking.

Q. A certain vessel or bark called the Ninfa de los Mares, of the burthen of 477 Spanish tons, without cargo, but in ballast of about 200 tons, was sunk in the Narrows; she lay on the bottom nearly upright, with one of her masts, at least, above water; she was sunk by a collision with a steamer, a hole being stove in her port bow; was it possible to have raised such a vessel?

A. It was; yes, sir.

234 It would have been so possible in the winter months.

Cross-examined:

I know Captain Israel J. Merritt of the Coast Wrecking Company. I never was in the employ of that company. I am on friendly terms with him; don't know him sufficiently; was engaged once with him in raising a vessel together.

He is the general agent of the Coast Wrecking Company, as I understand; he has been for a great many years; that company has been the most considerable wrecking company in New York. I knew slightly the Columbian Wrecking Company.

The New York Submarine Wrecking Company bought out the Columbian Company.

I received my appointment of July, 1866, as superintendent of the New York Wrecking Company, and left in February or March, 1867.

Q. In the month of December, 1865, were you engaged in the wrecking business?

A. I was not.

I engaged in that business twenty-seven years ago at Key West.

I have not been in the business since February, 1867.

I was last in wrecking business prior to 1865, about twenty-one or twenty-two years prior thereto.

The New York Wrecking Company continued to do business for two years, to my own knowledge, after I ceased to be its superintendent.

Redirect:

The New York Submarine Wrecking Company was organized in the early part of 1865, I think.

I know that they carried on business of wrecking up to eighteen months ago. They were carrying on business in December, 1865, January, February, March, 1866, and during the summer, in the port of New York.

GEO. W. BROWNE.

Subscribed and sworn to before me this 3d day of March, 1871.

JOHN A. OWEN,
U. S. Com.

235 CHARLES MCDONALD, sworn, says: I reside in Brooklyn. I have charge of a Steam Derrick Co. I have been in that business for twenty years. I had charge of a steam-derrick in December, 1865. I know Israel J. Merritt of the Coast Wrecking Co. I had a conversation with Captain Merritt in December, in 1865, in relation to raising a Spanish bark which had been sunk in the Narrows. I understood she was sunk by collision with the steamer Alabama.

Q. State the conversation you had with Captain Merritt on this subject.

(Objected to, that the declarations of Captain Merritt are not material; question waived.)

A. I contracted with Captain Merritt to attempt to raise the Ninfa; it was verbal.

Q. What was he to pay you to get her up?

(Objected to; overruled.)

A. He was to pay me $2,500 to get her up, to the best of my knowledge. We were to have that if we got her up.

Q. Did he give you a description of the vessel?

(Objected to; overruled; exception.)

A. He did. I won't be sure of the tonnage. He said there were one hundred tons of ballast, and I believe he told me she was about four hundred tons burden. I went to the wreck about the 23d of December, 1867; it was on a Saturday, I remember, immediately preceding Christmas-day. I took my derrick. The topmast, top-gallant, and royal, and some of the yards were above water. They had not been cleared from the wreck. The bark was lying almost across the stream, heading to the nort'ward on the bottom. She was pretty nearly upright. She had a little list to the starboard. Went there in the morning. I went to work to put chains under. I put them under by the use of tug-boats going around and sweeping them under; got two chains under, I think; am sure that one was under; did not use divers. The chains were
236 made fast to the derrick, and at slack water, eight o'clock Saturday night, we hoisted. A gentleman came aboard representing to be the captain, through an interpreter. Merritt did not come. While I was at work putting chains under the vessel the interpreter said he wanted three chains under, as she had two hundred tons of ballast aboard. He said he paid for two hundred tons of ballast when he took it aboard. I said I did not think I could raise her with that amount of ballast aboard. I said as I had chains on ready to lift, I would make the attempt. I made the attempt with the two chains. We all came to

the conclusion that she came up either bodily or one end; could not say, as it was dark. While we were so raising one of our chains parted, and, feeling that she was raising that, I repaired the chain, which took us till four o'clock Sunday morning. After we had chains on her again, the proper time to try again was at eight o'clock, slack water. In the meantime there came on a southwest wind, and we had to take off our chains and leave for New York. We never made any other attempt to raise the vessel. I think one derrick, such as I took there, was sufficient to raise such a bark with one hundred tons of ballast. I am inclined to think that the derrick was not sufficient to raise such a vessel with two hundred tons of ballast; it would depend, however, on what kind of ballast. If the ballast was paving-stone or coarse gravel the derrick would not be efficient. There is some kind of ballast, perhaps, which the derrick would be sufficient. Captain Merrit afterwards applied to me to go down and try to raise her, and I think I told him I could not do it for that amount of money, and I can't recollect whether I refused to go or not.

(Objected to.)

Q. Had you known in the first place that there were two hundred tons of ballast in the Ninfa, would that have made any difference in the price asked by you in your attempt to raise her.

(Objected to.)

A. It certainly would.

Q. How much?

237 A. I should not have asked less than $5,000.

Q. Had you known that there were two hundred tons of ballast, what would have been your course to raise her?

A. I should have taken two or more derricks; it is my opinion that two or more derricks would have raised her; I should have made provisions for the bad weather to buoy my chains and take my derricks into harbor, and after the bad weather go back and commence operations; if this vessel had had but one hundred tons of ballast, I think I would have had her in New York Harbor on Sunday, the 24th of December; I was not paid anything for my trial. At the time I went there, I think that there had not been any trial to raise her before I tried.

I made no attempt to recover the doubloons which may have been on board. Made nor tried to make any contract to recover doubloons.

Cross-examined:

I raised a vessel within a few hundred (200) yards of that place once. The one I raised had a cut in her side. She was a pilot-boat, James Funcke, about 125 or 130 tons. I raised a schooner a mile below there, not in the channel, but in the tide-way. It was sand down there, but where the Ninfa lay was mud, I presume. It was mud where I raised the pilot-boat.

Q. Do you know anything about the suction caused by a mud bottom?

A. I don't know it scientifically. I know there is a suction.

Q. Are you able to state the amount of power requisite to overcome the suction of the bottom in raising the Spanish bark where she lay?

A. No, sir, as I do not know how deep she was in the mud.

Q. Was your contract with Captain Merritt anything more than to try whether you could raise her with your derrick, and to have $2,500 if you succeeded?

A. That was what we both meant.

238 Q. If the derrick could raise her, was not that comparatively a very inexpensive way of doing it?

A. It was the quickest way, and probably the cheapest way to raise her.

Q. Are you a wrecker, except in so far as you use your derrick to raise vessels?

A. I call myself a wrecker when I use the derrick to do it. My experience has been principally with the derrick, but I consider myself a wrecker outside of the derrick. Captain Merritt's experience has been mostly on the beach, and mine has been in deep water and shoal water. I can't say that my experience has been as large an l extensive. I have raised over 100 vessels.

Q. Is it your idea that the Ninfa was lifted some, which makes you think your derrick could have raised, with 100 tons of ballast?

A. Not exactly that; my other experience.

Q. Will you state positively that she was lifted at all?

A. No, I don't think I can.

Redirect:

It is my positive belief that one end came up.

I have raised about 20 vessels from deep water, in water over 25 feet deep. Have raised vessels from 5 feet to 145 feet in water. Raised the schooner Rachael Edwards in the North River; she had 243 tons of coal in her; a vessel about 250 tons; she was sunk in 145 feet or more of water.

I think the Ninfa was sunk in water, about 75 feet of water. I did not take soundings.

C. McDONALD.

Subscribed and sworn to before me this 3d day of March, 1871.

JOHN A. OSBORN,
U. S. Commissioner.

MARCH 18, 1871.

Proctors for respective parties present.

EVIDENCE FOR LIBELLANTS.

239 EDWARD C. PERRY, sworn, says:

My business is wrecking agent for the Coast Wrecking Company; been in wrecking business twenty-seven years.

The Coast Wrecking Company tried to raise the Ninfa. I had charge of the work at one time.

Q. In your judgment, was it possible to raise the vessel?

(Objected to.)

A. I have raised a large number of vessels.

Question repeated.

(Objected to; overruled.)

A. It was not possible to raise the vessel. It was not a fit time in December to raise her, on account of the weather; if we had an easterly blow, or southerly weather, a heavy sea comes in from the lower bay, and when northerly and westerly blow, have rough weather, and when there is any ice making, can't lay there at all, and because of such a current there, and also on account of 70 feet of water there. After December, the sediment and mud filled the vessel up, and when the weather got suitable we could not then apply power enough to raise her. I applied about 850 tons lifting-power; had four scows, and broke down; broke six twenty-four-inch logs, cut them right off in lifting. I

was at work at her personally for nine days. This was 'long in the spring of the year; I think March or April. I was the last one who had hold of her. 350 tons lifting-power will raise a vessel with stone ballast; would lift 500 tons, taking the buoyance of the vessel, &c., under the water. I had a schooner or steam-hoister, four large scows, six chains—one two-inch chain, and the others 1¾-inch chains; schooner's crew, 6 men, and my men made 18 men in all; a diver, and diving apparatus, and the steamer Relief. That kind of wrecking equipment is liable in a gale of wind to tear to pieces and sink it; it takes considerable time to get ready where the water is deep; the diver has to dive to fasten chains; it was a very bad place where the Ninfa was sunk, on account of the depth of water and strong current, ebb and flow; could
240 only send the diver down in slack water; could not send him down when tide was running either way; could not get chains under her because she was sunk so in the mud; had to bridle her; she lay a little on her side; the diver told me that she had a little list; had to send the diver down to secure the small chain, so we could put the large chain after it.

Cross-examined:

Diver's name was Dyer. He is dead now; was killed in Philadelphia, working on the Ironsides. I know from what the diver told me that the vessel was on her side, and that the chains could not be got under. Captain Merritt's party, of the Coast Wrecking Company, under Captain Poule, were at work there before I got there. I relieved Captain Poule, who was sick. I attached the scows to the chains; took the scows from Staten Island. Captain Poule had been there and attached the chains. I took the lift. When I got there I found the chains bridled to the Ninfa. I sent a diver down after I got there to clear the bridle; sent him down half a dozen times, sometimes to pass a lash under to see if everything was clear and see if the chains were leading right; no other diver there with me; did not send the diver down to look in the cabin; after taking two or three lifts, and finding I could not start her, sent diver down to see how deep she was in the mud; took four lifts, and the last lift the scows were completely submerged, you may say. She would not come up; so much weight, so much mud and sediment, and no more chance to apply any more power. Two of the scows we hired, and two belonged to the Coast Wrecking Company. The company owned the schooner and the Relief, and all the appliances, steam-hoister, &c.; the company had owned them some time. That kind of equipment is considered first class; it was ample to raise the Ninfa, if she had not been filled with mud. In good weather it would take from twelve to fourteen days to get everything ready to lift; it would take fourteen days before I could get ready to lift anyway. We buoy the chains in bad weather, and when the
241 weather gets good come back and pick the chains up and make fast to the scows, and get ready to lift. If there comes a bad day when we are at work and we could get clear, we would buoy the chains and go into port, but if we are fast we have to take the storm and the consequences by breaking down, sinking the scows, &c. By being fast I mean, that is, being hove down on the low water as close as I can get and ready to take the rising tide to lift. Any time before I get fast I could detach myself, buoy the chains, and get away, but I should want six hours—four hours at least—to do this, and if the storm came suddenly, could not get detached.

Q. After you are made fast and the tide begins to rise, how long would it take to lift her if not full of mud?

A. In one tide we could loosen her from the bottom and take a steamboat and tow her towards the shore until she grounded again, and the next tide the same thing until we got her decks out of the water; do not detach her chains at all unless they slip, and then we raise her again by the next tide and adjust the chains. The first time I went down to these scows was in March or April; this was the first time I went to the wreck. I can't say whether these scows had been used before I went there or not. I found the chains there ready for me to take hold of. I can't recollect now more definitely the time I went there. The company's books will show the time; the books are kept at their office, either 49 or 65 Wall street; by referring to the books I think I could tell the exact time; the secretary of the company has charge of the books, Walter R. T. Jones. I do not know where the Ninfa was sunk; I was away on the coast of New Jersey at work. I was away there a month at least. I don't know what the state of the weather was in the Narrows in the month of December; I was between Great Egg Harbor and Absecomb, New Jersey. I do not know whether there was any ice in the Narrows while I was absent; I got back from Jersey coast in February, the last part of the month, I think. I was in New York between Decem-

242 ber and February, once or twice; staid perhaps a day at a time. When I got back in February, did not go anywhere until I went down to raise the Ninfa; the weather was rainy and blowing, some pleasant days, such weather as we usually have in the month of February. The scows are better than a derrick, for heavy weight, because we can attach more power; a derrick, for what they can lift, can be quicker applied. Four scows would have as much as four times the lifting power of one derrick, and four scows would have twice as much as two derricks.

Q. A sunken vessel absolutely light, without ballast, when she is first sunk would require about how much lifting weight; the size of the Ninfa, say 500 tons?

A. Two large scows ought to have picked her up from the bottom; a lifting power of 150 tons would carry her; two of these scows are just twice that power. I don't know how this vessel headed, as I never took the bearings. A vessel lying in that channel all winter would be pretty likely to fill with mud. Capt. Merritt was not down there while I was at work.

Redirect:

We could not take that vessel over two feet at a tide in that depth of water; I would take twelve days at two tides a day to get her decks out of water, and that is if everything holds good, and good working days.

Q. How is the weather in January and February, ordinarily at that place, (Narrows,) with reference to raising a vessel?

(Objected to; overruled; exception.)

A. It is weather not fit to work there, and I would not undertake to attach a vessel under any consideration during those three months.

Recross:

I did not know that Capt. Merritt made a contract to raise the vessel; at work on the beach in New Jersey in January, 1866. I was trying to save some iron from a vessel; did not succeed. I was not personally afraid to work there or any where.

Q. If Capt. Merritt had sent you in the month of December, 1865, or January or February, 1866, to attempt to raise the Ninfa, would you have gone?

243 A. I should have gone, as I would have to go. Capt. Merritt

did not send me in December, January, and February. Capt. Merritt is the man who sends us to places to do wrecking work. If we find the weather bad we go to a harbor. When the weather is good we renew the work. We judge of the weather while at work. Capt. Merritt does not judge of the weather beforehand.

E. C. PERRY.

Subscribed and sworn to before me this 18th day of March, 1871.

JOHN A. OSBORN,
U. S. Commissioner.

Adjourned to March 23, 1871, at eleven o'clock a. m.

EVIDENCE FOR CLAIMANTS.

WALTER R. T. JONES, sworn, says:

I live at Jericho, Queens County, New York; place of business, 65 Wall street. I am treasurer and secretary of the Coast Wrecking Company, and was in 1865 and 1866. The attempt by the Coast Wrecking Company to raise the Ninfa by scows was in April, 1866. We started March 16, with the pontoons or scows, and got ready and made the first lift with them on April 25, 1866. We then doubled the lifting power and made another effort on May 11, 1866, and after this we gave up. Major Perry had charge of both efforts.

Examined by Mr. Parsons:

I think that Major Perry had charge of both efforts. I can't say that Mr. Pool first had charge and was retained by Major Perry. I can't say that he was not. I was not down there. The dates I testify from are taken from the records of this office, which I keep.

W. R. T. JONES.

Sworn and subscribed to before me this 23d day of March, A. D. 1871.

JOHN A. OSBORN,
U. S. Commissioner.

244 CHARLES MCDONALD, recalled by claimants:

I was engaged in wrecking during the winter of 1865 and 1866, in the port of New York. I recollect some particular parts of the winter. I refer to a log-book we keep as to the work we did, and I remember how the weather was about from the 1st of January, 1866, through the winter. My impression is that it was rather mild from the 15th of December, 1865. I can't say, as I have no recollection of the weather. I recollect that one week before Christmas, 1865, the weather was soft, rainy weather, as I was wrecking a boat at the foot of Vesey street. I know that there was ice from the ninth to the 12th of January, 1866. My impression is that there was comparatively little ice that winter.

Q. How much time will ice interrupt wrecking in the Narrows, on the average, each winter?

A. I should say not to exceed two weeks.

Q. Have you had occasion to observe, with your experience, the temperature necessary to produce ice to be troublesome?

A. I have not, to state positively. It depends on the temperature and the quarter from which the wind blows to determine how long floating ice will last, after a cold snap. If the wind is from the north-

west ice lasts longer than if the wind is from the northeast. If moderate weather succeeds the cold snap and the wind is in the northeast, ice will not last more than a day or two. It depends, also, whether the moderate weather is accompanied with rain. I have worked raising vessels in the port all the winter months; wrecked vessels in the East River. Sometimes in the slips we have wrecked vessels in the North River between Bedloe's and Governor's Island. It was in December or January, I think, in 1857. It was either the brig Rush or the brig Demarara; raised them both in that locality.

(Objected to.)

Q. Was there ice at the time you raised the brig?

A. There was a great deal heavy ice running while we were actu-
245 ally at work. She was a hermaphrodite brig, between 250 and 300 tons, laden with a cargo malado; that is a very heavy cargo. The depth of water there was about 70 feet. One of those brigs I raised in the summer-time. I think the current in the Narrows, where the Ninfa was sunk, was quite as swift as in the East River. The running of the ice in the Narrows is about like the running of the ice in the East River. The running of the ice in either place would sweep away anything that would be put there.

Q. What vessel did you raise in the East River in the winter months?

(Objected to; sustained.)

A. I have raised several in the slips and at the end of the slips in the winter season, but can't say that I have raised any in the middle of the channel. We have had scows to assist in wrecking with derricks, I having charge of the whole thing.

Q. How much per tide it is usual to make when working with scows?

A. At tide work—so far as my experience goes, don't believe you can go over four feet per tide.

Q. Is it possible to use more additional power with scows and make more rapid progress in lifting a vessel, than simple tide work?

A. We can add power and increase speed; we can work without any tide-work at all—can raise her by scows without the rise or fall of tide; this additional power consists of using hydraulic pumps or screws; the lifting capacity of a hydraulic pump commonly used in lifting is marked 30 tons each; by the use of hydraulic pumps, without wanting for tide, with everything properly adjusted, if you can lift all, can lift 15 feet in 12 hours.

Q. It is possible to add to the lifting capacity of a derrick by using the derrick as a scow; and, if so, how?

A. We sometimes use the derricks as scows; the derricks are 75 feet square.

Q. How large a vessel have you raised by means of derricks?

(Objected to; sustained.)

246 A. The lifting capacity of a derrick is about 85 tons dead weight, out of water; a wooden vessel in ballast with paving-stones, a derrick would lift one third more than 85 tons in water.

Q. How many derricks, in your judgment, would it have required to have raised the Ninfa at the time you made the effort in December, 1865, upon the assumption that she had 200 tons of paving-stones ballast in her?

(Objected to.)

A. The two derricks we then owned would have lifted her, in my judgment.

Q. If you can state, from your recollection, state how many days you could have worked at the Ninfa in January, 1866?

A. I am sure I could have worked the 12th, 13th, 14th, and 15th days of January at the Ninfa; also 19th, 20th, 21st, and 23d days of January; also the 26th and 27th same month. I can't remember as to February, nor as to the month of March.

Cross-examined:

Q. Is there any way in which it is possible to determine for any length of time ahead, how in the winter months the weather will be, or when will come the two or three weeks of ice which you state as the average?

A. A close observer of weather can judge when there is likely to be ice; can't say within a week or two weeks. I think we can tell for three days as to ice, possibly longer; as to weather, can judge more than 24 hours.

Q. Is what you mean to say that for the length of time stated by you a judgment can be formed?

A. I believe that I can form a judgment about it. The value of a derrick like ours, costs to build to-day $80,000.

Q. At the place where the Ninfa was sunk would a derrick be exposed to risks with certain winds and this ice running?

A. She would, in either case, be exposed to the risk of being destroyed.

247 Your contract with Capt. Merritt was merely to put the Ninfa, if you could, on the shore, was it not?

(Objected to.)

A. Yes, sir; to put her decks out of water at high water.

In stating that by tide-lifting we would lift 3½ to 4 feet every tide, I referred to a medium bottom—there is more or less mud. If the bottom is very soft, the distance would be less.

I never owned scows; when I have worked with them we hired them to assist us.

Never used them except in connection with a derrick.

It would take about three days to prepare, with two derricks, to lift the Ninfa; and after we are prepared to lift, it would have taken three days more, probably, to get her on the beach. During all this time we would be hitched on to her.

If at the expiration of three days, and before we commenced to lift, a storm came up or a wind, so we could not work, we would buoy the chains and go into port, and when it became proper weather again we would resume work. If there should come up a storm or a wind while in the act of lifting we would let her go, and unshield her chains, buoy them, and go into port.

Question by commr.: Knowing about the tonnage and character and weight of ballast of the Ninfa, as she lay in the Narrows, in December, 1865, and believing that I could raise her with two derricks, I would have taken the job for from $8,000 to $10,000 in that month, or any other winter month; and would have made the attempt.

C. McDONALD.

Subscribed and sworn to before me, this 23d day of March, A. D. 1871.

JOHN A. OSBORN,
U. S. Commissioner.

Adjourned to Friday, at 10½ a. m.

248 MARCH 24, 1871.

Proctor for respective parties present. Evidence for claimants.

THOMAS HENRY DOUBLEDAY, sworn, says:

I reside in New York. I am general clerk and book-keeper; am engaged as clerk at the news-room, 52 Pine street; been so connected since 1864. There are a good many merchants and ship-owners connected with it; the title of the concern is The Merchants' Exchange and News Association. There is a weather record kept by the association; it has always been kept since 1862 and 1863; it was part of my duty to keep that record. I have the record of the weather in this city during the latter part of the year 1865, and the early part of the season of 1866.

Please refer to the original record of the weather on the 15th day of December, 1865.

(The witness looks at book.)

Q. From what observation and data was this record made?

A. From a weather-vane attached to the building, and from a thermometer used there.

This information comes to the person who enters in the book, by a statement in writing, of the wind and weather and temperature. The statements are not kept after they are entered in the book. I do not myself make the observations.

Q. Read the record of the 8th of January, 1866, as entered in that book.

(Objected to, on the ground that it is immaterial; 2d, merely hearsay, as he did not make the observations. Overruled; exception.)

A. "Monday, Jan. 8, 1866: Wind north, fresh, clear; thermometer 10 below zero." All the entries for December 15, 1865, to Jan. 8, 1866, are in the handwriting of Robert Hudson; he was the manager, and the person who made the observations.

Q. Read from that book the entry of December 15th, 1865.

249 (Objected to; overruled; exception.)

A. I have made a correct copy of the entries in the book, from December 15, 1865, to May 15, 1866.

The copy produced, and received in evidence instead of the original entries in book, and not objected, if the entries be evidence.

Marked "Exhibit H, J. A. O."

The record of the thermometer was taken at 9 a. m. I have the Sandy Hook telegraph report with me.

It was kept by different people.

I kept a portion of that report in the months of January and February, 1866. The other portions were kept by other clerks. The information was received from the telegraph office, situate in the news room, in Pine street, coming from Sandy Hook telegraph office. Reports received when anything is to be reported. I have examined this record for these two months, January and February, as to the prevalence of ice in the bay. I have a copy of the entries also.

Q. Read from the record the first of such entries for the month of January as to ice.

(Objected to as immaterial; 2nd, secondary evidence; 3d, nothing shown as to any duty of the person making the observation; overruled, commissioner receiving this class of evidence as the best evidence as to the daily record of the weather, and receives for that purpose alone, passing on its materiality hereafter.)

A. Tuesday, January 9th, 1866, at 10.20 a. m., Sandy Hook; bay full of ice.

I have a correct extract from the book of the entries in the book relating to ice. Offered in evidence, marked "Exhibit J, J. A. O." I have examined the record as to the month of February; no report entered of ice in the bay.

Cross-examined by Mr. Parsons:

I have no record of the thermometer during the night. At that time, I do not know where the thermometer stood. I did not see the observation written down; saw it on a piece of paper and handed to me.

250 Q. Have you any other knowledge in reference to ice in January and February, 1866, in the bay, than that you entered in your book—any report in reference to it—which happened to be sent from Sandy Hook?

A. I have not.

Q. Have you any personal knowledge from whom came such reports from Sandy Hook as were sent in reference to ice?

A. I have not.

THOMAS H. DOUBLEDAY.

Subscribed and sworn to before me, this 24th day of March, 1871.

J. A. OSBORN,
U. S. Commissioner.

APRIL 24TH, 1871.

Pursuant to last adjournment, the proctors for the respective parties present; and proctor for respondents sums up for claimants.

Adjourned to Wednesday, April 26th, 1871, at 11 a. m.

APRIL 26TH, 1871.

Parties present; and Mr. Parsons, proctor for libellant, sums up.

Reference closed.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

I, John A. Osborn, U. S. commissioner, to whom the reference in the above-named cause was ordered, do hereby certify that the foregoing pages contain all the testimony offered by the respective parties, together with the depositions and exhibits mentioned in the minutes of proofs herein.

JOHN A. OSBORN,
U. S. Commissioner.

APRIL 26TH, 1871.

251 NEW YORK, *Dec.* 16, 1865.

Agreement made this day between Israel J. Merritt and Messrs. C. Marti & Co., to raise the bark Ninfa de los Mares, now lying sunk in the New York Bay, for the sum of (30) thirty per cent. on vessel and cargo, exclusive of specie aboard.

(Signed) I. J. MERRITT.

[5-c. int.-rev. stamp, cancelled.]

(Endorsed:) Claimants' Exhibit No. 1, February 18, 1871.

No. 64 WALL STREET, *Dec.* 29, 1865.

THE COAST WRECKING CO.:

GENTLEMEN: The agents of the Spanish bark Ninfa de los Mares in-

form us that you have abandoned the raising of that vessel, as agreed by you on December 16, inst. We have to inform you that any delay in raising the vessel will be greatly to the damage of her owners, for which they will be compelled to hold you responsible.

Yours, respectfully,

MAN & PARSONS,
Attorneys, &c.

(Endorsed:) De las Casas vs. The Coast Wrecking Co. To the Coast Wrecking Co., Dec. 29, 1865. Copy. Claimant's Exhibit No. 2, Feb. 18, 1871.

252 *List presented by the mate of the Nymph of the Seas, of the goods which he had on said vessel.*

Spanish coin—30 oz. of gold, (doubloons, @ $17)	$510 00
One chronometer	200 00
One brass sextant	50 00
One barometer of "Buddon"	20 00
One watch and its gold chain	75 00
Three diamond shirt-buttons	32 00
Some gold sleeve-buttons	17 00
One black cloth frock coat	30 00
Two cassimere frock coats	30 00
Three cassimere pantaloons	18 00
One pair black pantaloons	6 00
Three pair white drill pantaloons	18 00
One piece of clothing of linen	17 00
Two ladies' dress patterns	36 00
1,000 Havana segars	35 00
6 bdls. of cigarettes	6 00
8 lbs. Picadora, (pipe tobacco)	4 00
Charts	150 00
Various books on navigation, and others	50 00
12 white linen shirts	48 00
12 linen drawers	25 00
Various pantaloons for use on board	32 00
Various colored undershirts	12 00
One silk hat	6 00
Various hats	8 00
One mattress, (wool,) 2 blankets, 2 sheets and pillows	20 00
Various trifles which I don't remember	
2 black vests	8 00
2 colored cassimere vests	6 00
3 pair patent-leather gaiters	12 00
Various shirts and jackets	48 00
One revolver	13 00
Sum total in gold	$1,542 00

New York, 20th December, 1865.

(Signed) BME. MATTHEW.

253 (Endorsed:) U. S. district court. The steamer Alabama ads. Las Casas. Copy. List of mate's articles.

EXHIBIT H.—J. A. O.

Weather report.

1865.		Wind.	Therm.
Dec.	15.	West; fresh, clear	26
	16.	North; light "	24
	17.	Northeast; light, cloudy	28
	18.	North; light, overcast	32
	19.	Southwest; light, raining	38
	20.	Northwest; fresh, cloudy	42
	21.	West; moderate, overcast	40
	22.	Northwest; moderate, clear	27
	23.	" light, clear	22
	24.	East; light, thick snow	33
	25.	Southwest; light, clear	38
	26.	" light, foggy	35
	27.	South; light; dense fog	48
	28.	North-northeast; moderate, cloudy	42
	29.	West; light, clear	40
	30.	Northeast; fresh, cloudy	34
	31.	Northwest; clear	33
1866.			
Jan.	1.	Northeast; light, raining	38
	2.	North-northwest; moderate, cloudy	36
	3.	North; light, cloudy	32
	4.	Northwest; light, cloudy	33
	5.	" fresh, clear	18
	6.	Southwest; light, clear	20
	7.	No report; Sunday.	
	8.	North; fresh, clear Below zero	10
	9.	" " "	10
	10.	West; " "	18
	11.	Northwest; light, cloudy	33
	12.	South; light, snowing	36
	13.	Southwest; light, clear	40
	14.	Northwest; fresh, overcast	35
	15.	Northwest; light, clear	8
	16.	North; light, raining	34
	17.	West; light, clear	28
	18.	Southwest, cloudy	36
	19.	South; light, foggy	38
	20.	Southwest; light, very foggy	40
	21.	West; fresh, clear	24
	22.	West; light, clear	20
	24.	North; light, cloudy	25
	24.	" " "	27
	25.	Northeast; fresh, raining	33
	26.	Northwest; light, overcast	33
	27.	" " clear	26
	28.	" " "	23
	20.	Northeast; " cloudy	31
	30.	Northwest; " "	33
	31.	" " clear	31
Feb.	1.	Southwest; " "	32
	2.	West; moderate, "	26

1866.	Wind.	Therm.
Feb.	3. West-northwest; light, clear	28
	4. West; " "	18
	5. " " "	14
	6. Northwest; fresh, clear	19
	7. Northeast; light, cloudy	17
	8. East-northeast; light, rainy	33
	9. Northeast; moderate, snowing	32
	10. North-northeast; light, cloudy	33
	11. Southeast; light, foggy	40
	12. South-southeast; light, cloudy	42
	13. Northwest; light, clear	41
	14. Northeast; " overcast	36
	15. West-northwest; fresh, clear	29
	16. West; " "	14
	17. Southwest; " "	20
	18. " light, clear	30
	19. West; very light; heavy rain, with fog	42
	20. West; light, clear	36
	21. Northwest; light, clear	30
255	1866.	
	Feb. 22. Southwest; light, clear	36
	23. East; very light and foggy	37
	24. Southeast; " "	46
	25. Northwest; moderate, clear	36
	26. " fresh, clear	17
	27. Southeast; moderate, with snow	27
	28. Northeast; light, overcast	30
Mar.	1. North; " "	31
	2. " " "	37
	3. South-southeast; light, foggy	38
	4. Southwest; light, clear	42
	5. Northwest; fresh, clear	28
	6. " " "	27
	7. Southwest; light, cloudy	33
	8. Northwest; fresh, clear	26
	" " " "	28
	9. " " "	28
	10. " " "	22
	11. South; light, clear	40
	12. " " cloudy	40
	13. Southeast; light, foggy	43
	14. Northeast; " "	39
	15. " " "	40
	16. Southeast; " "	48
	17. Northwest; fresh, clear	35
	18. " " "	23
	19. North; light, overcast	30
	20. Northeast; light, overcast	29
	21. East; " foggy	38
	22. Northwest; moderate, clear	37
	23. East; light, clear	38
	24. Northwest; light, overcast	40
	25. West; light, snowing	35
	27. Northwest; fresh, clear	28
	28. North; light, clear	32

1866.	Wind.	Therm.
Mar.	29. Southeast; light, raining	41
	30. Northwest; overcast	37
	31. Southeast; light, hazy	39
	April 1. West; moderate, clear	42
256	1866.	
	2. Northwest; light, overcast	04
	3. North; light, overcast	41
	4. Southwest; light, overcast	45
	5. South; light, foggy	47
	6. Northwest; light, hazy	56
	7. North; light, cloudy	41
	8. North; fresh, rain, and hail	34
	9. North; light, overcast	37
	10. North; light, hazy	38
	11. Northeast; moderate, cloudy	38
	12. Northwest; light, foggy	43
	13. South; light, hazy	47
	14. Northeast; fresh, clear	46
	15. North; light, clear	47.
	16. Northeast; fresh, raining	44
	17. Northeast; fresh, cloudy	43
	18. Northeast: light, cloudy	43
	19. South; light, very foggy	48
	20. Southwest; light, clear	57
	21. Southwest; light, hazy	60
	22. Southwest; light, cloudy	63
	23. Northeast; fresh, raining	59
	24. West; fresh, cloudy	45
	25. West; fresh, clear	49
	26. Northwest; fresh, clear	48
	27. Northwest; light, clear	47
	28. Northwest; light, clear	47
	29. Northwest; fresh, clear	50
	30. North-northwest; fresh, clear	45
May	1. Southeast; light, overcast	
	2. North; fresh, raining	41
	3. Northwest; fresh, clear	43
	4. West; light, clear	44
	5. West; light, clear	50
	6. West; moderate, clear, and pleasant	59
	7. Northwest; light, clear	50
	8. South; light, overcast	50
	9. South-southeast; light, cloudy	53
May	10. Northwest; light, clear	57
	11. Southeast; light, cloudy	56
	12. South; light, cloudy	57
	13. South; clear	62
	14. Northwest; fresh, clear	50
	15. Northwest; light, clear	49

(Endorsed:) New York weather report, from Dec. 15, 1865, to May 15, 1866. T. H. D. Copied from the general record-book, No. 54, telegraphs, etc.

Date of report.	Report.
1866.	
Tuesday, January 9, 10.20 a. m., Sandy Hook.	Bay full of ice.
Do., 2.40 a. m.	A two-masted propeller ashore on the Romer. She is badly iced up.
Wednesday, Jan. 10, 10.00 a. m.	The bay is full of floating ice.
12.20 a. m.	Brig Itasca is now in tow of two tug-boats off Sandy Hook, and are all fast to the ice.
Thursday, January 11, 8.00 a. m.	Bay full of ice.
Friday, January 12, 8.45 a. m.	Steamship Scotia is half way up the bay, going very slow; ice is bad.
Saturday, January 13, 10.35 a. m.	Ice going out of the bay very fast.

(Endorsed:) Reports from Dec. 15, 1865, to March 15, 1866. Copied from books Nos. 26 and 27 of Sandy Hook telegraph report. T. H. D.

(Endorsed:) Nicholas de las Casas, libellant, against the Steamer Alabama, the Steam-tug Game Cock. Testimony on second reference.

258 *Commissioner's second report.*

District court of the United States for the southern district of New York.

NICHOLAS DE LAS CASAS
against
THE STEAMER ALABAMA AND THE STEAM-TUG Game Cock, their tackle, &c.

In pursuance of an order of court made upon exceptions to the report of the undersigned commissioner, dated October 27th, 1870, by which among other things it was referred back to said commissioner to ascertain and compute the amount due the libellant for damages by reason of the collision in the pleadings mentioned, upon the principles stated in the opinion of the court upon such exceptions, and upon the evidence put in on the former reference and such further evidence as should be offered by either party, and report thereon to this court:

I, John A. Osborn, the commissioner to whom the matter was referred back, do report, that I have been attended by the proctors for the respective parties, and have taken and examined the testimony offered by the respective parties under the first order of reference, and the additional evidence put in under the second order, in support of and in opposition to the libellant's claim for damages aforesaid, and do find and report as follows:

The evidence shows that the bark Ninfa de los Mares, owned by the libellant, was sunk on the 15th day of December, 1865, in the Narrows, off Staten Island, in about seventy feet of water, by the wrongful acts of the steam-tug Game Cock and the steamer Alabama, and the

259 court on the trial of the cause decreed to the libellant the right to recover damages by him sustained by reason of the collision and sinking in the pleadings mentioned.

It was claimed on the reference by counsel for claimants that the libellant was not entitled to recover damages for a total loss of his vessel, because proof was furnished to the commissioner of the practicability and feasibility of raising the bark after the collision, and the efforts made and means adopted by the libellant to save his property, or stop the progress of the damage thereto, do not bring his conduct within the principle of law, and the measure of damages laid down by the court in the case of the Baltimore (8 Wall., 377) to justify the commissioner in giving him the value of his vesssel.

The evidence is so prolix, and the testimony of experts so varied bearing on this branch of the case, that the commissioner deems it unnecessary to incorporate in his report the different opinions of wreckers; but considering the whole evidence in the light of what the court held in the case of the Baltimore to be the duty of the owner of the sunken vessel, the commissioner is of the opinion that the libellant used "reasonable exertions," exercised "ordinary skill and diligence," acted in good faith and with promptitude to provide means to rescue his sunken property, whatever negligence or laches may be attributed to the Coast Wrecking Company or other parties sought to employ means to raise the sunken bark. The libellant did not abandon the wreck or by culpable default suffer the damage to augment, if the commissioner understands the evidence on the reference and the doctrine of the court in the case alluded to.

The commissioner was furnished with no evidence by either party as to the extent of the injury, the probable cost of repairing the same, the time required to make repairs, amount of compensation for detention, nor with evidence as to whether she could have been repaired and made as good as before the collision.

Under all these facts and circumstances, the commissioner finds as damages to libellant the following items:

260 The market value of the Ninfa at the port of New York at the time of collision	$50,000 00
Interest thereon from December 15th, 1865, to May 30th, 1871, at 6 per cent. per annum	16,375 00
Sum total of value of bark Ninfa with interest thereon to date	$66,375 00

The commissioner's reasons for reporting the market value of the bark at fifty thousand dollars are not founded on the testimony of any one witness or number of witnesses testifying to that particular sum; but by reason of the wide range of opinions among the numerous witnesses as to her value, the commissioner believes that the evidence taken as a whole will justify his conclusion as to her market value, it being difficult to adopt the estimate or opinion of any particular witness as to her value.

There were on board of the Ninfa at the time of the collision, and lost or sunk with the vessel, two hundred and thirteen (213) Spanish doubloons, nine (9) of which were afterwards recovered by a diver. The cost to recover the nine was four and a half doubloons. The number of doubloons lost, and for which the libellant is entitled to recover, therefore, is two hundred and eight and a half doubloons, (208½,)

	equivalent in gold and silver coin of the United States (rating the doubloon at $15.85 in gold and silver coin of the United States) to		$3,304 72
	Ship stores lost, valued at one hundred (100) doubloons, equal to (estimating the doubloon at $15.85 American gold and silver)	$1,585 00	
261	Loss of the captain's personal property, valued at fifty-six (56) doubloons, some of the property having been recovered, valued at two (2) doubloons, (deposition of Miguel de las Casas.) The amount therefore to be reported, and which is so reported, is fifty-four (54) doubloons' worth of lost articles, valued at $15.85 American coin, each	855 90	
	The mate lost by the sinking of the Ninfa articles valued at 1,542 Spanish milled dollars; and estimating the Spanish milled dollars at $1.06 American gold, amounts to	$1,634 52	
			4,075 42
			$7,380 14
	Interest on $7,380.14 gold, at 6 per cent. from the 15th day of December, 1865, to May 30th, 1871		$2,416 00
			$9,796 14

RECAPITULATION.

The market value of the Ninfa at the time of collision, in lawful paper money of the United States	$50,000 00
Interest thereon from Dec. 15th, 1865, to May 30th, 1871, at 6 per cent. per annum	16,375 00
Total loss of bark, with interest, makes total amount of damage to libellant as to loss of vessel, in United States lawful paper currency, sixty-six thousand three hundred and seventy-five dollars	$66,375 00

262	208½ Spanish doubloons lost, valued in American gold at	$3,304 72
	Ship stores lost, valued at 100 doubloons, equal in American gold to	1,585 00
	Loss of captain's personal property, valued in American gold at	855 90
	Loss of mate's property, valued in American gold at	1,634 52
		$7,380 14
	Interest thereon from Dec. 15th, 1865, to May 30th, 1871, at 6 per cent., gold	2,416 00
	Total loss of personal property and doubloons, including interest, in gold	$9,796 14

All which is respectfully submitted.
New York May 30th, 1871.

JOHN A. OSBORN,
U. S. Commr.

MAN & PARSONS,
Proctors for Libellant.

(Endorsed:) United States district court, southern district of New York. 19,356,382. Nicholas de las Casas vs. the Steamer Alabama and the Steam-tug Game Cock, their tackle, &c. Commissioner's second report. Man & Parsons, proctors for libellant. Entered order. Filed May 30th, 1871.

263 U. S. district court.

THE STEAMSHIP ALABAMA, HER ENGINES, &C., the Coastwise Company, claimants, impleaded with the Steam-tug Game Cock, her engines, &c.,

ads.

NICHOLAS DE LAS CASAS, LIBELLANT.

The above-named claimants of the steamship Alabama hereby except to the report of the commissioner made under the order of this court and filed May 30th, 1871, as follows:

First. In that said commissioner has found therein "that the libellant used reasonable exertions, exercised ordinary skill and diligence, and acted with good faith and promptitude to provide means to rescue his sunken property, whatever negligence or laches may be attributed to the Coast Wrecking Company or other parties sought to employ means to raise the sunken bark;" whereas he should have found from the evidence that the libellant did not use reasonable exertions, exercise ordinary skill and diligence, or act with good faith and promptitude to provide means to rescue his sunken property; and whereas he should also have found from the evidence that the Coast Wrecking Company, who were employed by the libellant to raise the vessel, were negligent in their duty, did not use reasonable exertions, exercise ordinary skill and diligence, or act in good faith and with promptitude to provide means to rescue the sunken property; that the said wrecking company were the agents of the libellant in that respect; that the libellant's consignees, and the master of the vessel, acting in his interest, had full knowledge of the facts; and that therefore the negligence or laches of the said wrecking company was that of the libellant himself.

264 Second. In that said commissioner has found that the "libellant did not abandon the wreck or by his culpable default suffer the damage to augment;" whereas he should have found from the evidence that the libellant did abandon the wreck and by his culpable default suffer the damage to augment.

Third. In that said commissioner has found that he "was furnished with no evidence by either party, as to the extent of the injury, the probable cost of repairing the same, the time required to make repairs, amount of compensation for detention, nor with evidence as to whether she could have been repaired and made as good as before the collision;" whereas such evidence would have been immaterial.

Fourth. Referring to the last exeeption, the said claimants further except to the finding, on the ground that all the matters of evidence referred to therein are matters the burden of proof of which lies with the libellant; and that it was incumbent upon him to prove that the vessel could not have been raised, and could not have been repaired and made as good as before the collision, before a report as for a total loss is justified.

Fifth. In that said commissioner has found that the libellant is entitled to recover damages as for a total loss of his vessel; whereas h e

should have found from the evidence that he is not so entitled to recover.

Sixth. In that said commissioner has found that the market-value of the Ninfa at the port of New York, at the time of the collision, namely, December 15th, 1865, was $50,000; whereas he should have found from the evidence that said market value was not over $12,500.

Seventh. In that said commissioner has allowed interest on said value from December 15th, 1865, but not as damages; whereas he should have allowed such interest by way of damages, if at all; and whereas he should not have allowed interest even by way of damages, for the reason that he has found the value of the vessel in the paper or
265 legal-tender currency of the United States, at its value as it stood December 15th, 1865, whereas from that time to the present, such paper or legal-tender currency has steadily advanced in value at a rate more than equal to six per cent. per annum; wherefore the libellant has not suffered damages to the extent of six per cent. per annum upon the value of the vessel as found, or to any extent whatever.

Eighth. In that said commissioner has found that the libellant is entitled to recover the value of 208½ doubloons specie on board, and which were sunk with the Ninfa, on the ground that they were a total loss; whereas, in fact, he should have found from the evidence that the libellant made no proper efforts to recover said doubloons, and was guilty of such negligence in respect thereof as to forfeit the right to claim damages for their loss; that there was not proof sufficient to base a report upon as for a total loss; that they might, by the exercise of diligence and care, have been rescued, and that therefore the value of such doubloons should be disallowed.

Ninth. In that said commissioner has allowed the sum of $855.90 in gold as and for the value of the personal property of the master of the Ninfa; whereas he should have found from the evidence that the said master made no proper efforts to recover said personal property, and was guilty of such negligence in respect thereof as to forfeit the right to claim damages for their loss; that there was not proof sufficient to base a report upon as for a total loss; that a large portion of such property might, by the exercise of diligence and care, have been rescued; that the master has not designated the articles which would necessarily be totally lost by being wet, and that therefore the value of such property should have been disallowed.

Tenth. In that said commissioner has allowed the sum of $1,634.52 in gold as and for the value of the personal property of the mate of the Ninfa; whereas he should have found from the evidence that said mate made no proper efforts to recover said personal property, and was
266 guilty of such negligence in respect thereof as to forfeit the right to claim damages for their loss; that there was not proof sufficient to base a report upon as for a total loss; that a large portion of such property might, by the exercise of dilgence and care, have been rescued, and that therefore the value of such property should have been found not to exceed $622.50 in gold.

Eleventh. The said claimants except to the allowance of $2,416.00 in gold, as interest.

OWEN, NASH & GRAY,
Proctors for the Claimants of the Alabama.

(Endorsed:) U. S. district court. The Steamship Alabama, her engines, &c., the Coastwise Co., claimants, impleaded, &c., ads. Nicholas de las Casas. Exceptions to commissioner's second report. Owen,

Nash & Gray, proctors for claimants. Filed June 8th, 1871. Exceptions disallowed and report confirmed, June 28th, 1871. 19, 356, 382. S. B.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Tuesday, the tenth day of October, in the year of our Lord one thousand eight hundred and seventy-one:

Present, the honorable Samuel Blatchford, district judge.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA AND THE STEAM-tug Game Cock, their tackle, &c.
} Vol. 19, page' 356, 382.

This case having been heard on the exceptions taken by the
267 claimants of the Alabama to the commissioner's second report herein, dated May 30, 1871, and said exceptions having been disallowed, on reading the second report on file of John A. Osborn, esq., United States commissioner, to whom the above matter was referred, by which there is reported due the libellant for damages (by reason of the collision in the libel set forth) as follows: For total loss of bark Ninfa de los Mares, and interest to date of said report, the sum of sixty-six thousand three hundred and seventy-five dollars, United States currency, and for loss of 208½ Spanish doubloon s, of ship stores, of captain's personal properties, and of mate's property, with interest thereon to date of said report in gold coin of the United States, the sum of nine thousand seven hundred and ninety-six $\frac{14}{100}$ dollars.

Now, on motion of Man & Parsons, proctors for the libellant, it is ordered that said second report be in all things confirmed, and that the libellant recover in this action against the Steamer Alabama, her tackle, &c., and the Steam-tug Game Cock, her tackle, &c., the above-mentioned sum of $66,375.00, United States currency, with interest thereon from the date of said report to the date of his decree, being the sum of fourteen hundred and thirty-eight $\frac{12}{100}$ dollars, together amounting to the sum of sixty-seven thousand eight hundred and thirteen $\frac{12}{100}$ dollars, United States currency; and that he also recover herein against said steamer Alabama and steam-tug Game Cock the further above-mentioned sum of nine thousand seven hundred and ninety-six $\frac{14}{100}$ dollars, in gold coin of the United States, with interest thereon from the date of said report to the date of this decree, being the sum of two hundred and twelve $\frac{24}{100}$ dollars in gold, together amounting to the sum of ten thousand and eight $\frac{38}{100}$ dollars, in gold coin of the United States; and also his costs, which have been taxed (by consent) at fifteen hundred and thirty-nine $\frac{59}{100}$ dollars; and that said steamer Alabama and steam-tug Game Cock be condemned therefor.

And, on like motion, it is further ordered that out of the pro-
268 ceeds of the stipulations for costs and value of the said steamer Alabama and steam-tug Game Cock, when paid into the registry of the court, the clerk of the court pay to the libellant herein, or his proctors, the amounts so decreed due, together with said taxed costs, and interest to date of payment.

And on like motion of Man & Parsons, proctors for the libellant, it is further ordered that, unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court,

the clerk, after deducting the taxed costs of the officers of the court, distribute the proceeds in satisfaction of this decree.

And it is further ordered, adjudged, and decreed, as between the respective vessels and their claimants, that, on the payment by the claimants of the Alabama of the amount of the said damages, interest and costs, less the amount for which the stipulators for the Game Cock have given bond, the proceedings of the libellant be stayed as to the Alabama and her claimants for the collection of the residue until the return by the marshal of an execution unsatisfied against the stipulators of the Game Cock for such residue, or until it shall otherwise appear that the said libellant is unable to enforce or collect from them such residue by process of this court; and any of the parties are to be at liberty to apply to this court, if occasion shall require, touching the enforcement of this decree.

SAM'L BLATCHFORD.

(Endorsed:) 19,356,382. United States district court for the southern district of New York. Nicholas de las Casas vs. The Steamer Alabama, &c. Final decree; conf'n com'r's second report. Man & Parsons, proctors for libellants, 56 Wall street. Jno. E. Parsons, advocate. Filed October 10th, 1871.

269 U. S. district court, southern district of New York.

THE STEAMER ALABAMA, HER ENGINES, tackle, &c., the Coastwise Company, claimants and appellants, impleaded with the Steam-tug Game Cock, her engines, &c. *ads.* NICHOLAS DE LAS CASAS.

SIR: Take notice that the Coastwise Company, claimants of the steamer Alabama, above named, do hereby appeal to the next circuit court of the United States for the southern district of New York, in the second circuit, from the whole and every part of the decree of the district court for said southern district, made and entered in this cause the 10th day of October, 1871, in favor of the libellants.

Dated New York, October 20th, 1871.

Yours, &c.

OWEN, NASH & GRAY,
Proctors for Clts. of the Steamer Alabama.

To GEORGE F. BETTS, Esq., *Clerk.*
MAN & PARSONS, Esqs.,
Proctors for Lib'lts.
BEEBE, DONOHUE & COOKE, Esqrs.,
Proctors for Clts. of Tug-boat Game Cock.

(Endorsed:) United States district court, southern district of New York. 19, 356, 382. The Steamer Alabama, her engines, &c., impleaded with the Steam Tug-boat Game Cock, her engines, &c., ads. Nicholas de las Casas. Notice of appeal of the claimants of the steamer Alabama. Owen, Nash & Gray, proctors for clts. of steamer Alabama. Filed October 20th, 1871.

270 U. S. district court.

THE STEAM-TUG GAME COCK, &C., IMPLEADED, *ads.* NICHOLAS DE LAS CASAS, &C.

Please to take notice that the claimant of the steam-tug Game Cock appeals from so much of the decree herein as holds his vessel or his stipulation liable for any of the damages caused by the collision in the pleadings mentioned.

Dated October 27, 1871.

Yours, &c.,

BEEBE, DONOHUE & COOK,
Proctors for Libellant.

To GEO. F. BETTS, Esq., *Clerk.*
JOHN E. PARSONS, Esq.,
For Libellant.

(Endorsed:) 19,382. U. S. circuit court. The steam-tug Game Cock, her tackle, &c., impleaded, ads. Nicholas de las Casas. Notice of appeal. Beebe, Donohue & Cook, proctors for Game Cock. We admit due and timely service of a copy of the within notice. Dated November 3, 1871. Man & Parsons, proctors for libellants. Filed Nov. 14, 1871.

271 Circuit court of the United States for the southern district of New York.

THE STEAMER ALABAMA, HER ENGINE, TACKLE, &c., the Coastwise Company, claimant and appellant, impleaded with the Steam Tug-boat Game Cock, her engine, &c., *vs.* NICHOLAS DE LAS CASAS, LIBELLANT AND APPELLEE.

To the honorable the circuit court of the United States for the southern district of New York:

The petition and appeal of the Coastwise Company, claimants of the steamer Alabama, above named, respectfully shows:

That on or about the 21st day of December, 1865, the above-named libellant filed his libel in the district court of the United States for the southern district of New York against the steamer Alabama, her engines, machinery, boats, tackle, apparel, and furniture, and against the steam tug-boat Game Cock, her engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest in either of the said vessels, in a cause of collision, civil and maritime, in which said libel, it is alleged, and praying as therein contained, to which said libel the petitioner refers for its contents; that thereafter, and on or about the 23d day of December, 1865, the said Coastwise Company, claimants of the steamer Alabama, having
272 executed the necessary stipulations for costs and value, filed its claim and answer, alleging as therein contained, and insisting that the said steamer Alabama was not liable for the damages claimed by said libellant, and praying that said district court would, as against the appellees, pronounce against the said libel, and condemn the libel-

lant in costs, as will more fully appear on reference to said answer, and to which, for the contents thereof, this appellant asks leave to refer. That thereafter the said cause came on to be tried and to be heard before the honorable Samuel Blatchford, sitting as judge of said district court, on the 7th, 8th, 9th, and 10th days of October, 1867, upon the allegations and proofs adduced by the respective parties, and said judge having advised thereon, on or about the 24th day of October, 1867, made a decretal order or sentence bearing that date, that the libellant recover in said action against the steamer Alabama, her engine, &c., the steam tug-boat Game Cock, her tackle, &c., the damages by him sustained by reason of the collision in the pleadings mentioned, and that it be referred to a commissioner of said court, to ascertain and compute the amount of such damages, and to report thereon to that court, as by reference to said decretal order will appear; that after proceeding with such reference before John A. Osborn, esq., one of said commissioners, he made his report to said court, bearing date the 20th day of September, 1870, to which exceptions were taken by the claimant of the steamer Alabama; that such proceedings were thereupon had upon the said exceptions that on or about the 27th day of October, 1870, an order was made and entered herein allowing certain exceptions and setting aside said report, and referring the case back to the commissioner to ascertain and compute the amount of the damages sustained by the libellants by reason of the collision mentioned in the pleadings, upon the evidence put in on the said former reference, and such further evidence as should be offered by any party upon the principles
273 stated in the opinion of said court upon said exceptions, as by reference to said order will more fully appear; that proceedings were thereupon afterwards had before the said commissioner, who afterwards made his second report, bearing date the 30th day of May, 1871, to which said last-mentioned report the claimant of the said steamer Alabama filed exceptions, and such proceedings were thereupon had upon such last-mentioned exceptions that the same were overruled and the report confirmed, and an order to that effect was made and entered herein on or about the 28th day of June 1871; that afterwards, and on or about the 10th day of October, 1871, a final decree was entered in the said district court in substance and effect that the libellant recover in this action against the steamer Alabama, her tackle, &c., and the steam-tug Game Cock, her tackle, &c., the sum of $67,813.12, United States currency, with interest, and that he also recover herein against said steamer Alabama and steam-tug Game Cock the further sum of $10,008.38 in gold coin of the United States, and also his costs taxed at the sum of $539.59, which, on reference to said decree, will more fully appear. And this appellant is advised and insists that the said decree is erroneous for that the said libel should have been dismissed as against the said steamer Alabama, her tackle, &c., with costs, and also for that the decree should have adjudged that the steamer Alabama, her tackle, &c., if liable at all, was only liable upon an apportionment for one-half of the alleged damages, and no more, and that the steamboat Game Cock and her claimants were liable for the other part thereof. Wherefore this appellant, for these and other reasons, appeals from the whole of the said decree of this district court, in so far as the same relates to the steamer Alabama, to the next circuit court to be held in the district, and on the said appeal it prays that the said cause may be heard anew upon the pleadings and proofs in the district court, and upon additional
274 proofs to be introduced in the said circuit court, and that the record and all proceedings in the said cause may be returned to and

heard anew in said circuit court, and that the said decree, in so far as the same relates to the steamer Alabama, may be reversed with costs, or such decree thereupon be made as shall be just and proper in the premises.

OWEN, NASH & GRAY,
Proc's for Clts. of Steamer Alabama, Appellants.

(Endorsed:) 19–382. U. S. circuit court, southern district of New York. The Steamer Alabama, her engine, tackle, &c. The Coastwise Company, claimant and appellant, (imple'd with the Steam Tug-boat Game Cock, her engine, &c.,) vs. Nicholas de las Casas. Petition of appeal of claimant of steamer Alabama. Filed Nov. 2, 1871.

Know all men by these presents that we, Augustus L. Brown, of No. 514 Fifth avenue, in the city of New York, and George W. Quintard, of No. 43 West 33d street, are held and firmly bound unto Nicolas de las Casas, of La Palma, Canary Islands, in the sum of one hundred and sixty thousand dollars, to be paid to the said Nicolas de las Casas, his executors, administrators, or assigns, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated the sixteenth day of October, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas the Coastwise Company, claimants of the steamer Alabama, her engines, &c., impleaded with the steam-tug Game Cock, her engines, &c., as appellants, have appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the tenth day of October, 1871, in a suit in which the above-named Nicolas de las Casas is libellant, against the
275 steamship Alabama, her engines, &c., The Coastwise Company, claimants, and the steam-tug Game Cock, her engines, &c.:

Now, therefore, the condition of this obligation is such that if the above-named appellants, the said The Coastwise Company, shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against them, as such appellants therein, if they shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

AUG. L. BROWN. [L. S.]
GEO. W. QUINTARD. [L. S.]

Sealed and delivered, and taken and acknowledged this 16th day of October, 1871, before me.

EDWARD L. OWEN,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Augustus L. Brown and George W. Quintard, being duly sworn, each deposes and says that he resides in the southern district of New York, and that he is worth the sum of one hundred and sixty thousand dollars, over and above all his just debts and liabilities.

AUG. L. BROWN.
GEO. W. QUINTARD.

Sworn to this sixteenth day of October, A. D. 1871, before me,
EDWARD L. OWEN,
U. S. Commissioner.

This bond approved as to form and amount and sufficiency of surety. Dated New York, October 30th, 1871.

SAM'L BLATCHFORD,
District Judge.

276 We consent that this bond be approved.
Dated October 27th, 1871.

MAN & PARSONS,
For Appellees.

(Endorsed:) 19,356,382. United States circuit court for the southern district of New York, in the second circuit. Nicolas de las Casas vs. The Steamship Alabama, her engines, &c., impleaded with Steam-tug Game Cock, her engine, &c. Bond for damages and costs on appeal. Owen Nash & Gray, proctors for appellants. Filed this thirtieth day of October, 1871.

We hereby consent that the clerk certify the foregoing apostles.
Dated April 19, 1872.

MAN & PARSONS,
Proctors for Appellee.
OWEN, NASH & GRAY,
Proctors for Appellants.
BEEBE, D. & C., *For Ap'ells.*

(Endorsed:) Filed Ap'l 22, 1872.

277 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this fourth day of June, in the year of our Lord one thousand eight hundred and seventy-two, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and an act entitled "An act to establish the judicial courts of the United States,'" passed September 24th, 1789, did call and cause to be and personally appear before me, at my office at number 7 Wall street, in the city of New York, in the said southern district of New York in the State aforesaid, Joseph Limeburner, to testify and the truth to say on the part and behalf of the steamer Alabama, in a certain suit or matter of controversy now depending and undetermined on appeal in the circuit court of the United States for the southern district of New York, at New York, wherein the steamer Alabama, her engine, &c., the Coastwise Company, claimants, impleaded with the steam tug-boat Game Cock, her engine, &c., is appellant, against Nicholas de las Casas, appellee.

And the said Joseph Limeburner being about the age of
years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Joseph

Limeburner, and he did thereupon depose, testify, and say as follows, viz:

278 U. S. circuit court.

THE STEAMER ALABAMA, HER ENGINE, &C., the Coastwise Company, claimant, impleaded with the Steam Tug-boat Game Cock, her engine, &c., appellant,
vs.
NICHOLAS DE LAS CASAS, APPELLEE.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

JOSEPH LIMEBURNER, being duly sworn for the appellants, says:

1. Q. What is your occupation, and what was it at the time of the collision mentioned in this case; and how long have you followed the seas?

Ans. I was captain of the Alabama; and have followed the sea forty years; and have been master of a vessel over twenty years.

2. Q. State your experience in the management of steamers at sea & in harbors.

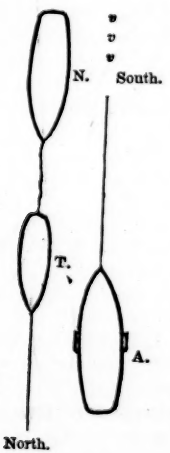
Ans. I have had experience in the management of steamers for seven or eight years.

279 3. Q. If a barque like the Ninfa, having no motion of its own, were in tow by a steam-tug, and the tug were going due north, or in any other direction, in what direction would the vessel in tow move?

Ans. In the same direction as the boat towing her.

4. Q. Look at Diagram No. 1, and say whether, if the courses of A., T., and N. should continue as here indicated, collision could take place.

No. 1.

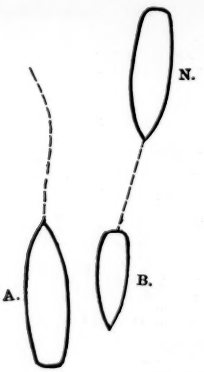


(Obj. to.)

Ans. No, sir.

5. Q. If the course of the tug and barque continued the same, and the Alabama took the course as indicated in Diagram No. 2 and cleared the tug, state whether if the Alabama kept her course she could have
280 struck the Ninfa.

No. 2.



(Obj. to.)

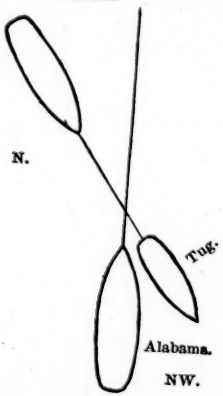
Ans. No, sir; she could not.

6. Q. If the Alabama kept on the course until she came close to the tug and then put her wheel hard astarboard and cleared the tug, state whether she could have struck the Ninfa if the course of the tug remained unchanged and the course of the Alabama continued the same after the wheel was put astarboard?

Ans. No, sir; it would be impossible.

7. Q. If the tug changed her course and crossed the bow of the Alabama as represented in Diagram No. 3, and while the tug was crossing the wheel of the Alabama was put astarboard, clearing the tug, on which bow must she strike the Ninfa, if at all?

South. No. 3.



281 Ans. On the starboard bow. She could not strike on the other bow.

8. Q. At the time of the collision, state the condition of the Alabama, touching the question as to the lading.

Ans. She was full cargo, heavy laden, and destined for New Orleans.

9. Q. What was her size, and what would you say of her momentum as she was thus laden?

Ans. She was 1,051 tons new measurement, and her momentum would be immense.

10. Q. State whether, with her momentum, it was easy or difficult to stop her?

Ans. It was difficult to stop her; she was moving at about six miles per hour through the water.

11. Q. Had the Ninfa lights; had the tug signal-lights showing she had a tow?

Ans. I did not see any lights on the Ninfa. I looked at her and think I should have seen the lights if there had been any.

282 12. Q. When did you first look at the Ninfa?

Ans. When I came forward from the cabin, immediately after the collision.

13. Q. How was she placed in reference to the Alabama?

Ans. Her forestay was down on the Alabama's bow, and she was held by the forestay on the Alabama's bow.

14. Q. To have been in that position, in what direction must the Alabama have struck her?

Ans. At about right angles.

15. Q. Where were you at the time of the collision; and what did you do?

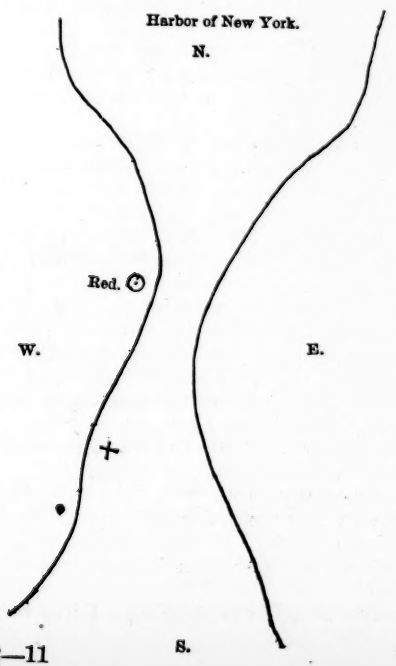
Ans. I was in the cabin. I came on deck immediately, and went forward to ascertain what the damage was.

16. Q. State how near the shore the collision took place, and how near the fort the Alabama was at the time?

283 Ans. We were from 200 to 250 yards from the shore; the Alabama must have been 4 or 500 yards below the fort, on the Staten Island side.

17. Q. State as to the correctness of diagram No. 4, as representing the shore of the harbor, the positions of the fort, and the place of the collision.

No. 4.



(Obj. to.)

Ans. That is correct; the red being called the fort; the collision happened at the black cross, (+;) the black dot represents the light-house.

18. Q. In going out of the port, at which side did you keep?

Ans. To the right.

19. Q. And when the collision occurred, state how much nearer you could have been to the right, if any, with safety?

284 Ans. We were near enough to the shore; it was a dark night; it would not have been safe to have been any nearer.

20. Q. State as to the rapidity with which you hastened to the bow upon the collision.

Ans. As fast as I could walk.

21. Q. If there had been the proper lights of the proper color on the Ninfa at that time you could have seen them, could you not?

(Obj. to.)

Ans. I could have seen the green light.

22. Q. Did you see any green or any red light?

Ans. No, sir.

23. Q. Who was the pilot in charge at that time?

Ans. Martino.

24. Q. Do you know whether he is a pilot of long experience or not?

Ans. Yes, sir, he is.

25. Q. Is he still a pilot?

Ans. Yes, sir.

Cross-examination by counsel for the appellee:

26. Q. Have you seen the questions propounded on your direct examination before your examination before the commission?

Ans. Yes, sir.

27. Q. Were they all written out before you attended for examination?

285 Those you see in Mr. Pierrepont's handwriting were.

28. Q. Are all the questions down to question number 17 in Judge Pierrepont's handwriting, *are* were they all examined by you before your coming here as a witness?

Ans. Yes, all, with the exception of ques. 12, 13, 14, & 15.

29. Q. Were the questions in Judge Pierrepont's handwriting prepared by him in concert or consultation with you?

Ans. No, sir.

30. Q. Was there no conversation between you and him on the subject until the questions were all completely written out?

Ans. No, sir.

31. Q. You say, in answer to question 6, that if the Alabama kept on her course until she came close to the tug, or then put her wheel hard-a-starboard, and cleared the tug, it would be impossible for her to have struck the Ninfa. If the course of the tug remained unchanged, and the course of the Alabama continued the same, after the wheel was put a-starboard, would not that depend upon the direction in which the Alabama approached the tug and her tow?

Ans. No, sir; they could not have touched.

32. Q. Question repeated.

286 Ans. Yes, sir; it would depend upon the way in which they approached each other.

33. Q. Do you know, of your own knowledge, how the vessels approached each other.

Ans. Not the course they were steering; I was in the cabin.

34. Q. Do you mean to state that, even on the hypothesis of diagram number 3, and of question number 7, it was impossible for the Alabama, continuing her motion, to strike the Ninfa on her port-bow?

Ans. I don't see any possible way she could.

35. Q. Would it not depend upon the rate she was sailing?

Ans. I don't know as it would; I can't see as it would.

36. Q. Would it not also depend upon the rate the tug and the Ninfa were sailing, as compared with the rate the Alabama was sailing?

Ans. I don't know as it would make any difference.

37. Q. What was the tonnage of the Alabama, old measurement?

Ans. I don't know; her tonnage would be larger.

38. Q. You say, in answer to question 14, that for the forestay of the Ninfa to be down on the Alabama's bow, and for the Ninfa to
287 held by her forestay on the Alabama's bow, the Alabama must have struck the Ninfa at about right angles; would not that depend upon whether the two vessels remained together exactly as when they struck?

Ans. I assume that they remained together, or very nearly, as they came together.

39. Q. Would not the motion of each vessel, and particularly the great momentum of the Alabama, of which you have testified, force around the head of the other?

Ans. If we had kept going ahead it would have done so, but you must recollect that we were backing, or trying to back, our ship.

40. Q. Do you mean to state that your vessel was not going ahead at the time of the collision?

Ans. No, sir; I don't mean to say that. She might not have been going ahead.

41. Q. Who drew the diagrams Nos. 1, 2, 3, & 4 in your deposition?

Ans. I suppose it was Judge Pierrepont, but I did not see him.

42. Q. You did not draw them?

Ans. No, sir.

Redirect:

43. Q. When the Ninfa went down was her forestay still across the Alabama's bow?

Ans. We cut it and let her down.

288 44. Q. At the time of the collision how long had you been absent from the deck?

Ans. About ten minutes.

45. Q. What was the general course of the Alabama?

Ans. About south to where the collision happened, from the wharf at New York.

CAPT. J. LIMEBURNER.

Subscribed and sworn to before this 4th day of June, 1872, the parties having consented that the testimony should be taken before me as United States commissioner.

EDWARD L. OWEN,
U. S. Commissioner.

289 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that on this fourth day of June, in the year of our Lord one thousand eight hundred and seventy-two, I, Edward L. Owen,

a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and an act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at number 7 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, John Martino, to testify and the truth to say, on the part and behalf of the steamer Alabama, in a certain suit or matter of controversy now depending and undetermined on appeal in the circuit court of the United States for the southern district of New York, at New York, wherein the steamer Alabama, her engine, &c., the Coastwise Company, claimant, impleaded with the Steam Tug-boat Game Cock, her engine, &c., is appellant, against Nicholas de las Casas, appellee.

And the said JOHN MARTINO, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John Martino, and he did thereupon depose, testify, and say as follows, viz:

I am 58 years of age.

1. Q. What is your present occupation, and how long have you been engaged in it?

Ans. Pilot in the harbor of New York, and have been engaged in it since the year 1837.

2. Q. State how familiar you are with this harbor, and the harbor regulations, in relation to pilots' duties.

Ans. I am acquainted with all the regulations, and with its shoals, courses, and distances, and have been since 1832.

3. Q. Do you remember the collision between the bark Ninfa and the steamer Alabama?

Ans. Yes, sir. I was pilot of the Alabama.

4. Q. Where were you standing at the time of the collision?

Ans. Close by the ship's wheel, in the wheel-house.

5. Q. How far was that from the bow of the ship, and how far was it elevated above the ship's deck?

290 Ans. It was from 35 to 40 feet from the stem and about seven feet above the ship's deck—that is, the floor of the wheelhouse.

6. Q. State as to that position in advantage for seeing ahead.

Ans. I could see from one beam to the other—that is, I could see over half a circle.

7. Q. As to the position being a good one for observation, what would you say?

Ans. I should say that it was as good a one as any aboard the ship.

8. Q. When you first saw the tug which towed the Ninfa, what was the distance?

Ans. I should judge about two miles.

9. Q. Where was the Alabama when you first saw the tug?

Ans. Somewhere between Vanderbilt's Landing and Clifton, on the Staten Island shore, and about a quarter of a mile from shore.

10. Q. Where were you piloting the steamer?

Ans. To Sandy Hook, from New York.

11. Q. On which shore were you keeping?
Ans. The Staten Island shore.
12. Q. Do you know whether you were bound to keep that shore? (Obj. to.)
Ans. Yes, sir, by the rules of navigation.
13. Q. When you saw the tug's light, as you have stated, what lights did you see, and over which of your bows did you see them?
Ans. I saw all her lights, and saw them on our port bow—that is, the red, green, and the white light on the flag-staff.
14. Q. In what direction were you then going, and in what direction was the tug then coming?
291 Ans. We were going south and she was coming north.
15. Q. If each had continued the same course as at the time mentioned, how would you have passed each other?
Ans. Each would have passed to the starboard.
16. Q. Would that be port side to port side, each passing to the right of the other?
Ans. Yes, sir.
17. Q. Did you see any change in the tug's course; and, if so, when did she first change her course?
Ans. I saw a change in her course, but not until she got close up to us.
18. Q. Until she got close up to you, and changed her course, did the Alabama change her course?
Ans. No, sir.
19. Q. How near to you was the tug when she changed her course, and what was the change she made? Describe it.
Ans. She was about two hundred feet off when she changed her course. I discovered the Sandy Hook lights, and the Highland light began to draw on her; that is, to go across my bows; what I mean is, I saw the lights of the tug begin to cross the line of the light of the light-house, and by that I judged she was crossing our bows.
292 20. Q. Please state whether she was crossing your bow?
Ans. Yes, sir, she was.
21. Q. On discovering that she was crossing your bow, what did you do?
Ans. Told the quartermaster to look out for his starboard wheel.
22. Q. What did that mean?
Ans. It meant not to get a sheer to the starboard.
23. Q. What next occurred?
Ans. As soon as I found we were going to clear the tug, I told the quartermaster to steady her on her course.
24. Q. Did you clear the tug; how far did you clear her; on which side did you clear her?
Ans. We cleared her, I should judge, about 20 feet on the starboard side.
25. Q. What occurred further?
Ans. The tug-boat blowed two whistles, which meant for us to starboard.
26. Q. What did you do?
Ans. I did not give any particular orders. I said to the quartermaster, that is to starboard. He hove the wheel to starboard. I saw him do it.
27. Q. How quick did he do it?
Ans. As quick as possible.
293 28. Q. Did you hear anything further from the tug at this time?

Ans. Yes, sir; he sung out, right after he blew his whistle, "Look out, or you will be into that tow astern of us."

29. Q. Until the tug thus sung out, did you know that he had a tow?

Ans. No, sir.

30. Q. Had he any signal-lights indicating that he had a tow?

(Obj. to.)

Ans. I did not see any.

31. Q. If there had been such, could you have seen them?

Ans. If they had been in the proper place, I should.

32. Q. What next happened after throwing the wheel to the starboard, and on receiving this notice about the tow?

Ans. I told the engineer to slow, stop, and back her.

33. Q. Was the order obeyed; and, if so, how quickly?

Ans. It was, just as soon as they could pull the bells.

34. Q. State whether it could have been done more quickly?

Ans. No, sir, it could not.

35. Q. State whether the steamer was heavy laden, and what was the rate of her motion?

294 Ans. She was very heavy laden, and her motion was from 5½ to 6 knots.

36. Q. As an experienced pilot, state whether, after you had notice of the tow, it was possible to have stopped the Alabama any sooner?

Ans. No, sir, it was not.

37. Q. State whether, as an experienced pilot, after the tug crossed your bow, in the way you have described, you could have avioded striking his tow by any exertion?

Ans. No, sir; if we had stopped her instantly where she was we could not have avoided the collision.

38. Q. Why could you not have avoided it?

Ans. Because of the angle they were coming together.

39. Q. How were they crossing; at what kind of angle?

Ans. She was all of two points on our port-bow.

40. Q. Then, if you were going south, and she was going northwest, would that make about the angle?

Ans. Yes, sir, about that.

41. Q. Where did you strike her?

Ans. On her starboard bow.

42. Q. State how your stem passed in relation to her forestay?

295 Ans. Passed under her forestay, between that and the foremast.

43. Q. Did that have any effect on her sinking?

Ans. It held her up.

44. Q. As soon as the collision occurred what did you do?

Ans. The mate on the forecastle sung out she was sinking, and I told the engineer to stop backing. I sung out to the mate to see to get all the crew of the bark aboard the steamer.

45. Q. Had the bark any lights; and, if so, what lights?

Ans. I did not see any.

46. Q. If she had had lights, red, green, & white, would you have seen them?

Ans. I think I should, if they had been on the proper place.

47. Q. Did you see any green or red light after the collision, or at the time, or before the collision on the Ninfa?

Ans. None, sir.

48. Q. Up to the time the tug began to cross your bow, state whether the Alabama had changed her course from the time you first saw the tug.

Ans. No, sir; she had not.

49. Q. If she had kept the same course as when you first saw her, and you had kept the course which you did keep, could there have been a collision?

296 (Obj. to that he has already testified that he did not keep his course.)

Ans. No, sir.

50. Q. What caused your to put your wheel starboard and how near were you to the tug before you put your wheel to starboard, and changed your course?

Ans. I put the wheel to starboard a little to clear the tug, seeing she intended to cross my bow. We could not have been then more than 100 feet apart.

51. Q. As she crossed your bow could you see all her lights; and, if not, what lights could your see, if any?

Ans. I could see her white light on the flag-pole; could not see any others because she was right close to us.

52. Q. Why did being close to you affect the seeing of any of her lights?

Ans. It was hid by our bow; that is, from me, from where I stood.

53. Q. Before she crossed your bow, could you see all the tug's lights at any time?

Ans. Yes, sir.

54. Q. When you first saw her, could you see all her lights?

Ans. Yes, sir.

297 55. Q. As you neared her, could you still see all her lights?

Ans. Yes, sir.

56. Q. When did she first hide any of her lights?

(Obj. to that the witness has not testified that she had any.)

Ans. She began to hide her red light just before she crossed our bow, or when she was in the act of crossing our bow.

57. Q. Which light is the red light?

Ans. Port.

58. Q. Being very familiar with the harbor, state whether, just before the tug begun to cross your bow, you could have safely been further to the right or nearer to the shore?

Ans. We were unusually close that night; we did not pass the fort further than 100 yards.

59. Q. How far from the fort did the collision occur?

Ans. About half way between the fort and the light; not more than 300 yards below the fort.

60. Q. State whether there was any difficulty in the channel, the state of the tide, shoals, rocks, or other causes, to prevent the tug from having passed you with her tow in safety by keeping to her right.

Ans. None, sir.

298 61. Q. Was there any Man-of-war Shoal or other shoal to prevent the tug with her tow passing you in safety?

Ans. None at all, sir; she was a mile and a half above it.

62. Q. What was the condition of the tide at the time of the collision?

Ans. It was within an hour of high water.

63. Q. What effect had that upon the tug and her tow; favorable or unfavorable?

Ans. Favorable—it was flood-tide.

64. Q. Have you seen the statement of William A. Hermance, at page 35 of the Apostles, that he was west of Man-of-war Shoals; heavy vessels generally go out east of those shoals; and what do you, as an experienced pilot, say to that statement?

(Obj. to on the ground that all Capt. Hermance testified was that as he came up the bay he was west of Man-of-war Shoals.)

Ans. Some vessels go to the eastward and some to the westward. I have gone to the westward with a vessel of 21 feet, and at low water; there is 18 feet of water on the shoals; at the time of this collision the water was 23 feet deep on the shoals.

65. Q. How far south of the place of this collision are these shoals?

Ans. Somewhere about a mile and a half.

299 Cross-examination by counsel for appellee:

66. Q. Will you as a seaman state that the lights of the tug crossing the course of your vessel necessarily assumes that she had changed her course?

Ans. Yes sir, I will.

67. Q. Do you mean to state that if the course of your vessel had inclined on the course of the tug, she being made a little on your port-bow, if she continue her course, the apparent effect to you would not be to carry her lights across your bow?

Ans. No, sir, it would not carry her lights across our bow; on the contrary it would carry them the other way.

68. Q. In testifying that because the lights of the tug crossed your course she must have changed her course, do you not assume that she had been sailing on a course exactly parallel to your own?

Ans. Yes, sir.

69. Q. Down to what interval before the collision do you assume her course to have been parallel to yours?

Ans. Down to not more than three minutes.

70. Q. Could you then see the tug?

Ans. I could see her lights; that is all.

71. Q. Have you any other means of determining the previous
300 course of the tug than such judgment as you could form from her lights?

Ans. Upon her lights; that is all.

72. Q. Is it, then, solely from her lights, and from the effect you have described of her lights crossing your course, that you testify to the course the tug was sailing and that she changed her course?

Ans. All I could tell was from the lights and the background, and from seeing her lights.

73. Q. Do you mean from seeing her lights cross the light-house lights, and are those what you mean by the background?

Ans. I mean from seeing her lights cross the light-house lights; the light-house lights are what I mean by the background.

74. Q. Does then your whole judgment depend solely upon seeing her lights cross the light-house lights?

Ans. Yes, sir; that convinced me that she was trying to cross our bow and had changed her course.

75. Q. Is it good seamanship, in your judgment, for a vessel so large as the Alabama, and as unmanageable as you have stated she was that night, to attempt to pass another vessel by so short a distance as twenty feet?

(That part of the question is objected to which presents the
301 witness as saying the Alabama was unmanageable that night.)

Ans. We frequently do with these little tug-boats; they dart in and out around us so that we can't tell which way they are going. I did not say she was unmanageable.

76. Q. Is not what you have just stated a pretty good reason for giving them a wider berth?

Ans. I should not think it was.

77. Q. Is it not also a pretty good reason for slacking speed?

Ans. If we are aware a collision is going to take place, we generally slack.

78. Q. Don't you always slack then?

Ans. Yes, sir, and reverse the engine and put the helm hard-a-port.

79. Q. When you see a tug-boat coming up the harbor, as was the case of the Game Cock that evening, don't you regard it as prudent to assume that they may possibly have a tow?

Ans. No, sir.

80. Q. With a tow do tug-boats dart in and around steamers, in the manner stated in your answer to the 75th question?

Ans. No, sir.

81. Q. In your judgment, is it good seamanship for a steamer
302 so large as the Alabama to attempt to pass another vessel by so short a distance as 20 feet, however manageable she may be?

Ans. It is a frequent occurrence in the harbor.

82. Q. What I wish to know is, your opinion whether at that place it is good seamanship?

Ans. Yes.

83. Q. Do you mean to state so without qualification?

Ans. Yes, sir.

84. Q. In answer to the 26 question you state that when the tug blowed two whistles, which meant for you to starboard, you did not give any particular orders. In your judgment, is it good seamanship in such an emergency for the person in charge of the vessel to give no orders, but to leave the man at the wheel to do as he likes?

Ans. I was partly confused at the time on account of his blowing his two whistles, knowing him to be clear of our bow; he was then on our starboard bow.

85. Q. So far as you saw, was not the safe thing for you to starboard your wheel?

Ans. No, sir.

86. Q. Did you then see the Ninfa when he blowed the two whistles?

Ans. No, sir; not till he hailed us.

303 87. Q. Was not the tug clear on your starboard bow?

Ans. Yes, sir; the tug was clear on our starboard bow when he blowed the two whistles.

88. Q. Was there anything which you could see to the eastward?

Ans. Nothing but the lights ashore on Long Island.

89. Q. Did not starboarding your helm carry you to the eastward?

Ans. Yes, sir.

90. Q. If then you saw nothing to the eastward, and starboarding your helm carried you to the eastward, why was it not, so far as you saw, the safe thing to do?

Ans. It would have been the safe thing to do.

91. Q. Why then did you not do what you say was the safe thing to do, and instead of that become confused and leave the man at the wheel to take care of himself?

Ans. I did not leave the man at the wheel to take care of himself. I stood alongside him, and when the tug blowed the two whistles, says I, "That means to starboard, and I want to know what he means by it." That was my conversation with the quartermaster when he blew his two whistles. At the same time, right after it, he sung out, "Look out or you will be into that tow astern of us." At the same time I told the
304 engineer to slow, stop, and back the ship; the bark then was two points on our port bow.

92. Q. Did you not then, before directing the engineer to slow, &c., wait till you saw the Ninfa?

Ans. No, sir.

93. Q. Did you not wait until you heard the hail from the tug?

Ans. Yes, sir.

94. Q. Were you not abreast of the tug before you heard the hail?

Ans. The tug was abreast the ship's pilot-house.

95. Q. Was there then anything between you and the Ninfa?

Ans. No, sir.

96. Q. Why didn't you see her?

Ans. It was so dark that I could not see her.

97. Q. Could you not see her lights if she had any?

Ans. If there had been any lights up, I should have seen them.

98. Q. Will you undertake to swear that she had no lights?

Ans. I did not see any.

99. Q. Is that the best answer you can give to the question?

Ans. That is the best answer I can give; I will swear I did not see any.

100. Q. Did not the man at your wheel know enough to star-
305 board, even although you did give him no order?

Ans. He did.

101. Q. Do you, as a pilot of the experience you stated in answer to the Alabama's counsel, approve this course?

Ans. No, sir; I did not approve of it.

102. Q. Why, then, when you saw him start to starboard his helm, did you not direct him not to do so?

Ans. I was satisfied, as soon as I understood there was a tow astern, that a collision was inevitable, and stopped the ship.

103. Q. Is that the best answer you can give?

Ans. To that question? Yes, sir.

104. Q. How far was the tug from the Alabama when her lights bore directly ahead?

Ans. About thirty feet, I suppose.

105. Q. Wasn't it a safe thing then to slow the Alabama?

Ans. No, sir; I don't think it was.

106. Q. When an object is directly ahead and a steamer of the size of the Alabama is heading directly for it, is not thirty feet pretty close quarters?

Ans. It is coming to pretty close quarters; but these tug-boats, we don't mind them any way.

107. Q. At any time before you saw the Ninfa, did you notice any vessels' lights lower down the bay than the tug?

Ans. I did not notice any, sir.

306 108. Q. Was not the tug so low in the water that you could not see vessels' lights down the bay from her, looking over her?

Ans. Possibly I might if there had been any there.

109. Q. If, then, the Ninfa had lights, ought you to have seen them when the tug was still some distance down the bay from you?

Ans. If they had been in the proper place, sir, I should have seen them.

110. Q. Should the persons on the forward part of the Alabama also have seen them?

Ans. I presume they might, and think they should, if they had been there.

111. Q. Do not vessels from sea take the westerly side of the channel as they approach quarantine?

Ans. Some cases they do, and some they don't.

112. Q. Is it not usual for them to do so?

Ans. I myself have sometimes gone that way, and sometimes to the eastward. It is done as much one way as the other.

113. Q. Do not the large steamers usually keep the middle of the channel in going out?

Ans. I suppose they usually do.

114. Q. How wide is the channel at that place?

A. I should judge it is about one mile across.

307 115. Q. When you saw that the lights of the Game Cock were crossing the course of the Alabama, did you not make up your mind that the side of the Game Cock on which for the Alabama to pass was the *east* [west] ward?

Ans. I made up my mind that we would pass to the eastward of the tug-boat.

116. Q. If you had been on the tug would not the Alabama's lights have seemed to you to be passing to the eastward?

Ans. Yes, sir.

117. Q. With the Alabama's lights appearing to be passing to the eastward of the tug, was not the westward of the Alabama the side upon which for the tug to pass?

Ans. Yes, but the tug compelled us to.

118. Q. By compelling you to, do you mean your assuming that the tug changed her course?

Ans. Yes, sir; I do.

128. Q. When you had made up your mind to pass the tug to the eastward, had you not nearly the whole width of the channel to the eastward clear for you to make the distance by which you would pass the tug as much as you liked?

Ans. Plenty of room, sir.

120. Q. And was not the tug and her tow crowded by the edge of the channel from getting farther to the westward?

308 Ans. No more than we were. She had plenty of room to the eastward of us; as much so as we had.

121. Q. For her to get to the eastward was it not necessary for her to run over you, or rather under you?

Ans. No, sir, if she had kept her course before she altered it.

122. Q. I refer to the time when you had determined to pass to the eastward, and without any reference to the change of course of the tug which you assume, but which is disputed.

Ans. Then it would have been impossible for her to go to the eastward without a collision.

123. Q. Were you examined as a witness on the trial of this suit before Judge Blatchford?

Ans. Yes, sir.

124. Q. Was the account you then gave of the collision the same as you give now?

Ans. In substance it was.

125. Q. Did you not then testify that when the tug blew her two whistles you told the quartermaster at your wheel to do what you now say was the wrong thing for him to do, starboard his helm?

Ans. I don't know as I told him so. I told him, that's for to starboard.

309 126. Q. Did you not also testify that he obeyed your order?

Ans. Yes, sir; he said so himself; he said he hove the wheel to starboard.

Redirect:

127. Q. At the time that the collision occurred, were there other people on the Alabama's deck besides those at the wheel?

Ans. Yes, sir. I can't state how many; there were several.

128. Q. Can you give the names of any of them?

Ans. Only Mr. Pendletons.

JOHN MARTINO.

Subscribed & sworn to before me this 4th day of June, 1872, the parties having consented that the testimony should be taken before me as United States commissioner.

EDWARD L. OWEN,
U. S. Commissioner.

310 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witnesses are material and necessary in the cause in the caption of the said deposition named, and that the cause is now pending on appeal in the circuit court of the United States for the southern district of New York from the district court of the United States for said district.

I further certify that no notification of the time and place of taking the said deposition signed be me was made out and served on the adverse parties to be present at the taking of the said deposition and to put interrogatories, if he or they might think fit, for the reason that the parties voluntarily appeared before me; and that on the fourth day of June, in the year of our Lord one thousand eight hundred and seventy-two, I was attended by the proctors for the steamer Alabama and for Nicholas de las Casas, the appellee, and by the witnesses, who were of sound mind and lawful age, and the witnesses were by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing in the presence of the witnesses and from their statements, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of delivering the same with my own hand to the court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this fourth day of June, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

EDWARD L. OWEN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

311 (Indorsed:) Vol. , page . United States circuit court for the southern district of New York. The steamer Alabama, her engine, &c., the Coastwise Company, claimant, impleaded with the steam-tug Game Cock, her engine, &c., appellant, vs. Nicholas de las Casas, appellee. Deposition of Joseph Limeburner and John Martino, on behalf of the steamer Alabama, taken by consent of parties the 4th day of June, 1872, before me, Edward L. Owen, United States commissioner. Filed the 17 day of June, 1872.

312 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered, that on this 15th day of October, in the year of our Lord one thousand eight hundred and seventy-two, I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and an act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me at my office, at No. 71 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, John F. Patterson, to testify and the truth to say, on the part and behalf of the steamer Alabama, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of New York, on appeal, at New York, wherein the steamer Alabama, her engine, &c., the Coastwise Company, claimant, impleaded with the steam tug-boat Game Cock, her engine, &c., is appellant, against Nicholas de las Casas, libellant and appellee.

And the said JOHN F. PATTERSON having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said John F. Patterson, and he did thereupon depose, testify, and say as follows, viz:

I am 37 years of age. My present occupation is clerk for Marshal O. Roberts, and have been for two years. I have been in his employ for sixteen years.

1. Q. Have you had any experience as a seaman; and, if so, what?

Ans. The only experience I have had is that of purser of a steamship for twelve years.

2. Q. State whether you have had opportunities in that way to learn the habits of sailors when they are discharged from their voyage.

Ans. I have.

3. Q. State whether you knew of any difficulties in finding them after they are discharged; and what are some of those difficulties?

Ans. The difficulties after the ship has arrived and discharged and they have secured their pay are, they generally scatter or disband, and, with very few exceptions, you seldom see the same men.

4. Q. As to their names, what would you say?

313 Ans. In many instances the names given by them upon shipping are given so loosely that it is not their genuine name.

5. Q. After Mr. Roberts became aware of the fact that he might be

held liable for a large amount in this suit, did he give you any directions, and in consequence of those directions did you do anything, and, if so, what?

Ans. He told me that Judge Pierrepont would be in the case and to report to him, which I did do. Mr. Roberts being present at the time, and he giving me directions to do, so far as possible, what Judge Pierrepont directed me to do, under Judge Pierrepont's directions I procured a list of the names of the crew of the Alabama at the time of the collision, from which list I took the names of those comprising what is called the deck department, and endeavored to find their whereabouts. I found two and also the fact of the death of the first officer. I found Pullin and Marsden. Of the others I could find no trace, either personally, nor could those that I directed so to do, that is—Captain Lamberger and the pilot and these two men—find any trace of them.

6. Q. State the extent of the efforts which you have made to find the deck department?

Ans. I have visited principal wharves where steamships come in, and have also had conversation with all officers and others employed on steamships, but could obtain no trace whatever of any of them. I saw Captain Lamberger, the pilot, and these two mentioned men fre-
314 quently during my own search, and they have met with no success in obtaining any clue.

7. Q. When did you receive these instructions from the counsel, and how long did you continue your search?

Ans. I think I received the instructions from the counsel in the month of February or March, 1872, and I have directly and indirectly continued the search up to the present time.

8. Q. You stated that you discovered that the first officer, Mr. Pendleton, was dead. When did you find that he died, and from whom did you learn it?

Ans. I found by visiting his late residence in Broome street, from his wife, that he died August 1st, 1868.

9. Q. You have spoken of the deck department. Why did you confine your investigations to the deck department?

Ans. Because I presumed those were the ones more specially interested and whose duties it would be to be around or on deck during the time the ship would be under headway. There is no affinity between what are termed three departments on a steamship, so that I considered it useless to seek information from either of the other two departments. The three departments consist of what are termed the deck, engineer's, and steward's.

315 The object of your investigation under the direction of counsel was to find out who were on the watch, was it not?

Ans. It was.

11. Q. Were you able to find out who were on the forecastle or who on the watch?

Ans. I was able to find out who were on the watch. The party on the forecastle I could not find.

12. Q. Were you able to find the persons themselves?

Ans. Those that were living I was; they are the persons I have named. I could find no others.

13. Q. Was there any list which would specifically tell who were on Mr. Pendleton's watch, which is called in the testimony the dog-watch, at the time of the collision?

Ans. There was not.

Cross-examined by counsel for appellee:

14. Q. Do you know that any one was on the watch on the Alabama at or before the collision?

Ans. No.

JOHN F. PATTERSON.

Subscribed and sworn to before me this 15th day of October, 1872, the parties having consented that the testimony should be taken before me as United States commissioner.

EDWARD L. OWEN,
U. S. Commissioner.

316 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Edward L. Owen, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit; under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is and the fact is the witness is material and necessary in the cause in the caption of the said deposition named, and that the cause is now pending on appeal in the circuit court of the United States for the southern district of New York, from the district court of the United States for said district.

I further certify that no notification of the time and place of taking the said deposition was made out and served on the adverse party to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit, for the reason that the parties voluntarily appeared before me.

And that on the fifteenth day of October, in the year of our Lord one thousand eight hundred and seventy , I was attended by the proctors for the steamer Alabama, and for Nicholas de las Casas, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the court for which the same was taken. And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this fifteenth day of October, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

EDWARD L. OWEN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

317 (Indorsed:) Vol. , page . United States circuit court for the district of . The Steamer Alabama, her engine, &c., the Coastwise Company, claimant, impl'd with the Steam Tug-boat Game Cock, her engine, &c., appellant, vs. Nicholas de las Casas, libellant & appellee. Deposition of John F. Patterson, a witness on the part of the steamer Alabama, taken by consent before me this 25th day of October, 1872. Edward L. Owen, United States commissioner. Filed the 17 day of October, 1872.

318 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York on Tuesday, the eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy-three:

Present, the honorable Lewis B. Woodruff, circuit judge.

NICHOLAS LE LAS CASAS, LIBELLANT & APpellee,
vs.
THE STEAMER ALABAMA, &C., IMPLEADED WITH the Tug Game Cock, respondent & appellant.

The above cause coming on for hearing on appeal—

Mr. John E. Parsons is heard in behalf of the libellant and appellee.

Mr. Edward H. Owen is heard in behalf of the respondents and appellants.

319 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York on Wednesday, the nineteenth day of November, in the year of our Lord one thousand eight hundred and seventy-three:

Present, the honorable Lewis B. Woodruff, circuit judge.

NICHOLAS DE LAS CASAS, LIBELLLANT & APpellee,
vs.
THE STEAMER ALABAMA, IMPLEADED WITH the Tug Game Cock, respondents & appellants.

The above cause being still on hearing—

Mr. Edward H. Owen continues his argument in behalf of the appellant'.

Mr. Charles Donohue is heard in behalf of the tug Game Cock.

Mr. Edwards Pierrepont is heard in behalf of the appellant, str. Alabama.

319½ At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York on Thursday, the twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-three:

Present, the honorable , circuit judge.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, IMPLEADED WITH St. Tug Game Cock, &c.

The above cause being still on hearing—
Mr. John E. Parsons is heard in reply.
C. A. V.

320 Circuit court of the United States for the southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMER ALABAMA, HER ENGINE, &C., and the steam tug-boat Game Cock, her engine, &c.

WOODRUFF, *Circuit J.:*

Notwithstanding the ingenious argument of counsel in behalf of the appellants herein, careful and repeated examination and scrutiny of the testimony results in the conviction that the collision in this case was caused by the mutual or contributory fault of the Alabama and the Game Cock. The former had no proper lookout. She ought to have seen the bark in tow of the Game Cock in season to avoid her. The proofs are convincing that the lights on the bark were bright and burning, and could have been seen and should have been seen by the Alabama and a course adopted to avoid her.

I am not satisfied that the Alabama ought not to have kept her course and suffered the responsibility and duty of avoiding her to rest on the Game Cock, where it belonged, and if the vessels approached so nearly as to suggest peril in so keeping her course, then that she should not have earlier slowed, and, if necessary, have stopped and backed
321 in due season. The fault of the Game Cock is equally if not still more clear. She was manifestly and grossly in fault in not carrying the lights required by law to indicate that she had a vessel in tow. Had she carried such lights and so furnished to the Alabama that information, it is in a high degree probable that no collision would have occurred. Notwithstanding the faults in the navigation of the Alabama, she did succeed in passing the Game Cock, and had she been apprised by the lights on the latter that the Ninfe was in her tow, she would doubtless have continued to move eastwardly on her starboard helm and have passed both tug and tow in safety. More than this, the tug acted under this alternative. The Game Cock and the Alabama were approaching end on, or very nearly so, in which case the tug should herself have ported and gone to the eastward of the Alabama, in which case there would have been no collision. Or, in the other alternative, the two steam-vessels were upon courses crossing each other so as to involve risk of collision, and the Game Cock had the Alabama (according to the witnesses from both the Ninfa and the Game Cock) on her own starboard bow, and by the rules of navigation was bound to avoid the Alabama, while the latter should have kept her course. Crossing the bow of the Alabama in this state of things, and especially doing
322 so without previous notice of an intention to do so, was a plain fault. She cannot say that her attempt to do so, in exercise of a right to choose her own mode of avoiding the Alabama, was thwarted by

the movement of the Alabama, since the latter, by starboarding, did just what the Game Cock expected her to do, and what, after the movement was begun, she signalled as her wish that she should do, so that whether the steamers be regarded as approaching nearly end on or as crossing with the Alabama on the Game Cock's starboard bow, the fault in the navigation of the Game Cock is palpable.

It does not save the Game Cock from condemnation that the Alabama starboarded also. This was done after she saw that the Game Cock was crossing and persisting in crossing to the westward; and if the movements were concurred in by each, it only makes a case of concurring fault, producing the collision which ensued. I concur with the district judge in his opinion in this case, (1 Benedict's Ad. Rep., 476,) that the collision was caused by the fault of both vessels, and in his reasons other than those above repeated.

I find nothing in the evidence as to the amount of damages, or in relation of the duty of the libellants to do more than was done for the purpose of raising the bark which calls for any modification of the
323 decree. But in regard to the liability of the Alabama for more than one-half the damages, this court has already decided that her liability cannot be increased by the circumstance in which she had no agency; that the Game Cock is not of value sufficient to pay the other half. (The City of Hartford and the Mist, decided in June, 1873; and see also the Atlas, 4 Benedict, 27, & 10 Blatchford, 459.) It is urged that such a holding involves a liability on the part of the Ninfa herself, which would make her liable for the fault of the tug, in such sense that if the Alabama had sustained the greater damage, the Ninfa must contribute thereto. Not at all; the holding merely imports that her relations to the tug which she had employed were such that she can recover no more than the tug (if injured to the same extent) could recover, or than the tug, if she had paid to the owners of the Ninfa her full value in discharge of their own plain liability, could in turn recover from the Alabama towards indemnity.

As between the Ninfa and the tug, the latter, under her contract for safe towage, or towage with proper care, prudence, and skill, was liable for the whole loss; so that whether this proceeding against the Alabama is prosecuted by the one or the other ought not to affect the Alabama.

It is very true that by the rules of the common law one who is
324 injured by the concurring fault of two or more may, it is held, recover full indemnity from either or all. But the admiralty do not inevitably follow the common-law rules, where as between two, each is in fault, neither can recover, but in admiralty each contributes. On the one hand it is not inequitable to say that the contribution of one ought not to be increased by circumstances which she had no agency in producing, and on the other it is not inequitable to say that the tow (as in this case) voluntarily subjected herself to the hazards of the misconduct of the tug, and therefore to the contingency that such misconduct might, in case of loss, give her no claim beyond contribution from another vessel. Had the tug discharged her own liability to the Ninfa upon her contract, as she ought, the tug could recover no more. The Ninfa should not be permitted to charge the Alabama more, because the Ninfa may have trusted irresponsible parties.

I am aware that the question is one of great interest and importance. There are, I think, some cases in the Supreme Court in which it must necessarily be soon considered; and we shall then be instructed whether to follow the views of Dr. Lushington in the case of the Milan, (1 Lush., 404,) and applied in the cases before cited, or to act upon a different rule

in the admiralty courts of this country. For the present, I must
325 say that the opinion in the case of the City of Hartford and the Unit must be taken as the opinion in this case upon the point now under consideration.

The decree, therefore, will award to the libellants a recovery from each vessel of one-half of the damages caused by the collision, as found in the district court, with costs in the court below, but without costs on the appeal to this court to either party.

(Endorsed:) Circuit court of the United States for the southern district of New York. Nicholas de las Casas vs. The Alabama & the Game Cock. Woodruff, circuit j. Filed Feb'y 19, 1874.

327 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York on April sixteenth, 1874:

Present, Hon. Lewis B. Woodruff, circuit judge.

NICHOLAS DE LAS CASAS, LIBELLANT AND APPELLEE,
vs.
THE STEAMER ALABAMA, HER ENGINE, TACKLE, &c., the Coastwise Company, claimants and appellants, and the steam-tug Game Cock, her engine, tackle, &c., William E. Gladwish, claimant and appellant.

The appeals of the claimants in this cause coming on to be heard, after hearing E. H. Owen and Edwards Pierrepont, esquires, advocates for the appellants, claimants of the Alabama; Charles Donohue, esquire, advocate for the appellants claimant of the Game Cock, and John E. Parsons, advocate for the libellant and appellee, and after due deliberation thereon—

328 It is ordered, adjudged, and decreed that the decree of the district court of the United States for the southern district of New York, made and entered in this cause on the 10th day of October, in the year 1871, be, and the same hereby is, modified so as to decree as follows:

And it is ordered, adjudged, and decreed that the libellant recover in this cause against the steamer Alabama, her engine, tackle, &c., the sum of $46,670.59, as follows:

One-half the sum of $66,375, United States currency, by the report the commissioner in the district court in this cause reported to be t damages sustained by the libellant by the loss of the bark Ninfa de los Mares by reason of the collision in the libel set forth, and interest to the date of his report, $33,187.50.

Interest from May 30, 1871, the date of such report, to the date thereof, 6,691.87.

And that the libellant recover herein against the said steamer Alabama, her engine, tackle, &c., the further sum of $5,885.69 in gold coin of the United States, as follows:

329 One-half of the sum of $9,796.14, by the said report of the commissioner in the district court reported to be the damages sustained by the loss of doubloons and ship-stores, captain's personal properties, and mates' property by reason of the collision in the libel set forth, and interest, $4,898.07.

Interest from May 30, 1871, the date of such report, to the date hereof, 987.62.

And that the exceptions to the said commissioner's report be and the same are hereby disallowed; and further, that the libellant recover in this cause against the said steamer Alabama, her engine, tackle, &c., the one-half of the sum of fifteen hundred and thirty-nine $\frac{59}{100}$, and interest thereon from October 10th, 1871, the date of said decree in the district court, together amounting to $905.53 dollars, being one-half *being* the costs of the libellant in the district court, the amount so decreed against the said steamer Alabama, her engine, tackle, &c., being the one-half of the damages and costs which the libellant is entitled to recover by reason of the said collision.

And it is further ordered, adjudged, and decreed that the libellant recover in this cause against the said steam-tug Game Cock, her
330 engine, tackle, &c., the sum of ten thousand two hundred and fifty dollars United States currency, being the amount of the stipulations for costs and value of the said steam-tug Game Cock in this cause, and being so much of the one-half of the damages and costs which the libellant is entitled to recover by reason of the said collision as the value of the said steam-tug Game Cock, her engine, tackle, &c., and her stipulation for costs suffice to pay.

And it is further ordered, adjudged, and decreed that each of the said vessels, her engines, tackle, &c., be condemned for the sums so decreed, against her.

And it is further ordered, adjudged, and decreed that out of the proceeds of the stipulations for costs and value of the said respective vessels, when paid into the registry of the court so far as the same will go, the clerk of the court pay to the libellant herein, or to his proctors, the amounts so respectively decreed against said vessels, together with said taxed costs and interest from the date of this decree to the time of payment.

And it is further ordered, adjudged, and decreed that unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the clerk, after deducting the taxed costs of the officers of the court, distribute the proceeds in satisfaction of this decree.

331 And it is further ordered, adjudged, and decreed that except in so far as the said decree of the district court corresponds with the aforesaid provisions hereof, the said decree of the district court be, and the same hereby is, reversed.

And it is further ordered, adjudged, and decreed that neither party recover costs on the appeal to this court.

(Signed) L. B. WOODRUFF, *Cir. J.*

(Endorsed:) U. S. circuit court. Nicholas de las Casas agst. the steamer Alabama et. al. Decree. Man & Parsons, for libellant. Filed April 18th, 1874.

332 Supreme Court of the United States.

THE STEAMER ALABAMA, HER ENGINE, TACKLE, &c., the Coastwise Company, claimant and appellant, impleaded with the Steam tug-boat Game Cock, her engine, &c., *ads.*
NICHOLAS DE LAS CASAS, LIBELLANT & APPELLEE.

To the honorable the Supreme Court of the United States:

The petition and appeal of the Coastwise Company, claimants of the

steamer Alabama, her engine, &c., above named, respectfully showeth:

That on or about the 21st day of December, 1865, the above-named libellant filed his libel in the district court of the United States for the southern district of New York; against the steamer Alabama and the steam tug-boat Game Cock, their engines, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest in either of the said vessels in a cause of collision, civil and maritime, in which said libel it is alleged and praying as therein con-
333 tained, to which said libel your petitioner prays leave to refer for its contents; that thereafter, and on or about the 23d day of December, 1865, the said Coastwise Company, claimants of the steamer Alabama, having filed its claim and executed the necessary stipulations for costs and value, filed its answer, alleging as therein contained and insisting that the said steamer Alabama was not liable for the damages claimed by said libellant, and praying that said district court would, as against your petitioners, pronounce against the said libel, and condemn the libellant in costs, as will more fully appear on reference to said answer, and to which, for the contents thereof, your petitioner prays leave to refer.

That thereafter such proceedings were had in said cause, that on the 10th day of October, 1871, a final decree was made and entered therein by said district court, wherein it was in substance adjudged that the libellant recover against the steamer Alabama, her engine, &c., and the steam tug-boat Game Cock, her engine, &c., the sum of $67,813.12 United States currency, with interest, and that he also recover against said steamer and the said steam tug-boat the further sum of $10,008 in gold coin of the United States, and also his costs, taxed at the
334 sum of $539.59, which, on reference to said decree, will more fully appear. That after such final decree had been entered, your petitioner duly appealed therefrom to the circuit court of the United States for the southern district of New York, in the second circuit, and such proceedings were thereupon had in said cause in said court that afterwards, and on the 16th day of April, 1874, a final decree was made and entered in said court, whereby, among other things, it was ordered, adjudged, and decreed that said decree of the district court be modified, and that the libellant recover against the said steamer Alabama one-half of the damages reported by the commissioner in the district court, with interest, together with one-half his costs incurred in said district court, amounting in all to the sum of $46,670.59, and that he recover the other half against the said steam tug-boat Game Cock, as by reference to said decree will more fully appear, and to which your petitioner prays leave to refer.

And your petitioner is advised and insists that said last-mentioned decree is erroneous, and that it adjudges and decrees that the steamer Alabama was in fault, and contributed thereby to the collision, and that she should pay, and was thereby decreed to pay, by way of
335 apportionment, one-half of the libellant's damages, as above stated, and half of the costs incurred in the district court; whereas it should have adjudged and decreed that the steamer Alabama was not in fault, and was not liable to pay any portion of the damages caused by the collision, and the costs of the district court, and should have reversed the decree of the district court entirely as against the Alabama, and as to her and her claimants, should have dismissed the libel with costs. That the said decree of the circuit court is also erroneous in so far as it adjudges the said steamer Alabama to be liable for the damages allowed thereby.

Wherefore your petitioner appeals from said decree in so far as it

adjudges and decrees that the steamer Alabama was in fault, and contributed thereby to the collision, and that she should pay, by way of apportionment, one-half of the libellants' damages, as above stated, and half of the costs incurred in the district court, and in so far as it adjudges said steamer Alabama to be liable for the damages allowed thereby; and respectfully prays that the said decree of the said circuit court, and the libel, answer, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States
336 without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, in so far as it adjudges and decrees that the steamer Alabama was in fault, and contributed thereby to the collision, and that she should, by way of apportionment, pay one-half of the libellant's damages, as above stated, and half of the costs incurred in the district court, and in so far as it adjudges said steamer to be liable for the damages allowed thereby, may be reversed, and a decree made dismissing said libel with costs, or such other decree made as to the Supreme Court shall seem just.

And your petitioner will ever pray.

Dated New York, April 23d, 1874.

OWEN & GRAY,
Proctors for the Coastwise Company, Claimant & Appellant.

(Endorsed:) Supreme Court of the United States. The Steamer Alabama, &c., impleaded, appellant, ads. Nicholas de las Casas, appellee. Petition of appeal. Owen & Gray, proct's for appel'ts.

Due service of a copy of the within petition of appeal admitted this 23d day of April, 1874.

337 MAN & PARSONS,
Procs. Appellees.

Filed April 28, 1874.

338 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE STEAMER ALABAMA, HER ENGINE, &C., the Coastwise Company, claimant and appellant, impleaded with the Steam Tug-boat Game Cock, her engine, &c., *ads.*
NICHOLAS DE LAS CASAS, LIBELLANT & APPELLEE.

Know all men by these presents that we, Marshall O. Roberts and Moses Taylor, are held and firmly bound unto the above-named Nicholas de las Casas, appellee, in the sum of ninety-three thousand three hundred & forty-one $\frac{18}{100}$ dollars, to be paid to the said Nicholas de las Casas, appellee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents, sealed with our seals and dated the twenty-third day of April, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas the above-named The Coastwise Company, claimant of the steamer Alabama, has prosecuted an appeal to the Supreme Court of

the United States, at the city of Washington, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute its appeal to effect and answer all damages and costs, if it fails to make such appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

MARSHALL O. ROBERTS. [L. S.]
MOSES TAYLOR. [L. S.]

Sealed and delivered, and taken and acknowledged, this 23d day of April, 1874, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

339 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Marshall O. Roberts and Moses Taylor, being duly sworn, depose and say, and each for himself says, that he resides in the city of New York; that he is worth the sum of one hundred thousand dollars over and above all his just debts and liabilities.

MARSHALL O. ROBERTS.
MOSES TAYLOR.

Sworn to this 23d day of April, A. D. 1874, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

The foregoing bond is approved as to its form and amount and the sufficiency of the sureties.

SAML. BLATCHFORD, *D. J.*

APRIL 27TH, 1874.

(Indorsed:) Vol. , page . U. S. circuit court. The Steamer Alabama, her engine, &c. The Coastwise Company, claimant and appellant, ads. Nicholas de las Casas, libellant & appellee. Bond for costs on. Approved April 24, 1874. Man & Parsons, libel't's proctors. Filed this 28 day of April, 1874.

340 By the honorable Samuel Blatchford, judge of the circuit court of the United States for the southern district of New York, in the second circuit.

To Nicholas de las Casas:

Whereas the Coastwise Company, claimant of the steamer Alabama, her engine, tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of Nicholas de las Casas against the said steamer Alabama, her engine, tackle, &c., and the steam tug-boat Game Cock, her engine, tackle, &c., stating that said decree is erroneous in their petion of appeal alleged, and praying that said cause may be heard anew, and that the said decree, in so far as the same adjudges and decrees that the steamer Alabama was in fault and contributed thereby to the collision, and that she should thereby pay, by way of apportionment,

one-half of the libellant's damages and half of the costs in the district court, and in so far as it adjudges said steamer Alabama to be liable for the damages allowed thereby, may be reversed; and as to said steamer Alabama, her claimants, the said libel may be dismissed
341 with costs, or such other decree made as to the Supreme Court shall seem just.

And the said Coastwise Company having dùly entered its said appeal to the Supreme Court of the United States, and filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the twenty-seventh day of April, in the year one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

SAML. BLATCHFORD.

(Endorsed:) U. S. circuit court, southern dist. of New York. The Steamer Alabama, &c., impleaded, appellant, ads. Nicholas de las Casas, appellee. Citation. Owen & Gray, proct's for applts.

Due service of a copy of the within citation admitted April 28, 1874.

MAN & PARSONS,
Proctors Appellees.

Filed April 29, 1874.

342 In the Supreme Court of the United States.

NICHOLAS DE LAS CASAS, LIBELLANT AND APPELLEE,
against
THE STEAMER ALABAMA, HER ENGINE, TACKLE, &c.; the Coastwise Company, claimants and appellants; and the Steam-tug Game Cock, her engine, tackle, &c.; William E. Gladwish, claimant and appellant.

To the honorable the Supreme Court of the United States:

The appeal of Nicholas de las Casas, the above-named libellant, respectfully shows:

That on December 21st, 1865, he filed his libel in the district court of the United States for the southern district of New York, against the said steamer Alabama, her engine, tackle, &c., and against the said steam-tug Game Cock, her engine, tackle, &c., in a cause of collision, civil and maritime, for the recovery of damages sustained by him as the owner of the bark Ninfa de los Mares, and by the master and mate
343 of the said bark, in consequence of a collision with the said steamer Alabama, by the fault of those in charge of her, and of those in charge of the said steam-tug Game Cock, in tow of which the said bark was at the time, as alleged by the libellant in his said libel, to the amount in the whole of $60,900.

That to avoid the arrest of the said steamer Alabama, upon process issued upon the libel in said cause, the said The Coastwise Company appeared and filed their claim to the said steamer, her engine, tackle, &c., and entered into stipulation for costs and for value of the said

steamer in the sum of $100,000, said bond to stand in place of said steamer in lieu of her being taken into the custody of the marshal. That on January 29th, 1866, the said The Coastwise Company filed their answer, praying that the said libel might be dismissed with costs, as by reference to the said libel and answer may more fully appear.

That the said steam-tug Game Cock was arrested upon process issued upon the said libel, and that thereupon the said William E. Gladwish appeared and filed his claim to the said steam-tug, her engine, tackle, &c., and she was thereupon discharged upon his entering into stipulation for costs and for value of the said steam-tug, the latter in the
344 sum of $10,000, and that on January 15th, 1867, the said William E. Gladwish filed his answer, praying that the said libel might be dismissed with costs, as by reference to the same may more fully appear.

That such proceedings were thereupon had in the said cause, that the same, on October 9th, 1867, came on to be tried before the honorable Samuel Blatchford, judge of the said district court, upon the depositions and proofs taken therein and the testimony and proofs adduced upon the trial by the respective parties, and the said judge having advised thereon, and having made a decree in favor of the libellant with a reference to ascertain the damages to which he was entitled on October 10, 1871, and commissioners report as to such damages, made his final decree, whereby it was, among other things, ordered, adjudged, and decreed that the said libellant recover in this cause against the said steamer Alabama, her tackle, &c., and the said steam-tug Game Cock, her tackle, &c., in all, the sum of $67,813.12, United States currency, and the further sum of $10,008.38, in gold coin of the United States, and also the costs of the libellant, taxed at $1,539, and that the said steamer Alabama and said steam-tug Game Cock be condemned therefor.
345 That by the said decree it was specially provided, as between the said respective vessels and their claimants, that on the payment by the claimant of the Alabama of the amount of the said damages, interests, and costs, less the amount for which the stipulation for the Game Cock had given bond, the proceedings of the libellant should be stayed as to the Alabama and her claimant for the collection of the residue until the return by the marshal of an execution unsatisfied against the stipulators of the Game Cock for such residue, or until it should otherwise appear that the said libellant was unable to enforce or collect from them such residue by process of the court. That thereupon both the claimants of the said steamer Alabama and of the said steam-tug Game Cock appealed to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby, and that such proceedings were thereupon had on the said appeal as that on February , 1873, the said cause was tried anew in the said circuit court before the honorable Lewis B. Woodruff, judge of the said court; and that on April 16, 1874, the said circuit court made a final decree in said cause, whereby it was, among other things, ordered, adjudged, and decreed that the said decree of the said district court be modified so as only to permit the recovery by the libellant of the
346 one-half of the damages and costs so decreed to him in the district court against the said steamer Alabama, and of $10,250 of the other half of such damages and costs against the said steam-tug Game Cock, and $10,250, being the amount of the stipulation for costs and value of the said steam-tug Game Cock.

That the result of the modification by the said circuit court of the said decree of the district court is, that for the one-half of the damages

sued for by the libellant in excess of the said sum of $10,000, and for the one-half of his costs in excess of $250, the said libellant will be remediless; although both the district court and the said circuit court held that he and his said vessel were free from fault in respect to the said collision, and that the same was caused by negligence and carelessness and improper navigation, both of the said steamer Alabama and of the said steam-tug Game Cock and those in charge thereof.

That the said decree of the said circuit court is, as this libellant is advised, erroneous, and in so far as the same modifies the decree of the said district court, should be reversed; and that furthermore, a decree should be made adjudging to the libellant the entire damages sued for by him, both against the said steamer Alabama, her engine,
347 tackle, &c., and against the said steam-tug Game Cock, her engine, tackle, &c., leaving those vessels and their respective claimants to adjust any question of contribution between themselves.

This appellant, therefore, appeals from the said decree of the circuit court of the United States so far as the same does not permit him to recover the entire amount of damages sued for by him, and his costs, against each and both of the said vessels, their engines, tackle, &c., and he respectfully prays that the said decree of the said circuit court, and the libel, answers, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay; that the said Supreme Court will proceed to hear the cause anew; that this libellant may be permitted to produce further testimony and proof therein, and may have a commission for that purpose; and that the said decree of the said circuit court, in the respects hereinbefore stated, may be reversed, and a decree may be made for a recovery by the libellant of the entire damages sued for by him as aforesaid, with his costs against both of the said vessels, their engines, tackle, &c., and that such other or further decree may be made by the said Supreme Court as shall be just.

Dated New York, May 2, 1874.

MAN & PARSONS,
Lib'l's Proctors.

348 (Endorsed:) U. S. Supreme Court. Nicholas de las Casas agst. the Steamer Alabama, et al. Appeal. Man & Parsons for liblt. & appellee.

Due and timely service of a copy of the within is hereby admitted this day of May, 1874.

OWEN & GRAY,
Proctors Alabama.
BEEBE, WILCOX & HOBBS,
Proctors Game Cock.

Filed May 7, 1874.

349

350 Circuit court of the United States, southern district of New York.

NICHOLAS DE LAS CASAS
vs.
THE STEAMSHIP ALABAMA, HER TACKLE, &C., the Coastwise Company claimants, and the Steam-tug Game Cock.

Know all men by these presents that we, Carlos Marti and William

B. Goff, are held and firmly bound unto the above-named The Coastwise Company, claimants, in the sum of one thousand dollars, to be paid to the said claimants, for the payment of which, well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the thirtieth day of April, 1874.

Whereas the above-named Nicholas de las Casas has prosecuted an appeal to the Supreme Court of the United States to reverse in part the decree rendered in the above-entitled suit by the judge of
351 the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellant' shall prosecute their appeal to effect, and answer all damages and costs if they fail to make good their appeal, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CARLOS MARTI. [L. S.]
W. B. GOFF. [L. S.]

In presence of—
GURDON S. BUCK.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Carlos Marti, being duly sworn, deposes and says that he resides at No. 255 West 23d street, in the city of New York, and is worth the sum of two thousand dollars over and above all his just debts and liabilities.

CARLOS MARTI.

Sworn before me this 30th day of April, 1874.
GURDON S. BUCK,
Notary Public New York County.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William B. Goff, being duly sworn, deposes and says that he resides at No. 133 East 16th street, in the city of New York, and is worth
352 the sum of two thousand dollars over and above all his just debts and liabilities.

W. B. GOFF.

Sworn before me this 30th day of April, 1874.
GURDON S. BUCK,
Notary Public, New York County.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 30th day of April, in the year 1874, before me personally came Carlos Marti and William B. Goff, to me known to be the persons described in and who executed the foregoing bond, and severally acknowledged that they executed the same.

GURDON S. BUCK,
Notary Public, New York County.

The foregoing bond is approved as to form and amount and the sufficiency of the sureties.
May 7th, 1874.

SAML. BLATCHFORD.

353 (Endorsed:) Circuit court of the U. S., southern district of New York. Nicholas de las Casas vs. the Steamship Alabama & others. Bond. Man & Parsons, proc., 56 Wall st. Approved. New York, May 1st, 1874. Owen & Gray, procs. for clts. of Alabama. Beebe & Donohue for Game Cock. Filed May 7, 1874.

354 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to the Coastwise Company, claimants of the steamer Alabama, her engine, tackle, &c., and to William E. Gladwish, claimant of the steam-tug Game Cock, her engine, tackle, &c.

Whereas Nicholas de las Casas, libellant and appellant, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York in the second circuit so far as the same does not permit him to recover the entire amount of damages sued for by him, and his costs, against each and both the said steamer Alabama, her engine, tackle, &c., and the said steam-tug Game Cock, her engine, tackle, &c., and has filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, 1874, to do and receive what may appertain to be done in the premises.

355 Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the seventh day of May, 1874.

SAML. BLATCHFORD.

(Indorsed:) U. S. circuit court. Nicholas de las Casas v. the Steamer Alabama, &c. Citation. Man & Parsons, lib'l't's proctors, 56 Wall street, N. Y.

Due and timely service of the within citation is hereby admitted this 11th day of May, 1874.

OWEN & GRAY
Proctors Str. Alabama.
BEEBE & DONOHUE,
Proctors Steam-tug Game Cock, &c.

Filed May 13th, 1874.

356 Supreme Court of the United States.

THE STEAM-TUG GAME COCK, HER ENGINE, tackle, &c., William E. Gladwish, claimant and appellant, impleaded with the Steamer Alabama, her engine, &c.,
ads.
NICHOLAS DE LAS CASAS, LIBELLANT & APPELLEE.

To the honorable the Supreme Court of the United States:

The petition and appeal of William E. Gladwish, claimant of the steam-tug Game Cock, her engine, &c., above named, respectfully showeth:

That on or about the 21st day of December, 1865, the above-named libellant filed his libel in the district court of the United States for the southern district of New York against the steamer Alabama, and the steam-tug Game Cock, their engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest in either of the said vessels, in a cause of collision, civil and maritime, in which said libel it is alleged and praying as therein con-
357 tained, to which said libel your petitioner prays leave to refer for its contents. That thereafter, and on or about the 23d day of December, 1865, the said William E. Gladwish, claimant of the steam-tug Game Cock, having filed his claim and executed the necessary stipulations for costs and value, filed his answer alleging as therein contained, and insisting that the said steam-tug Game Cock was not liable for the damages claimed by said libellant, and praying that said district court would as against your petitioner pronounce against the said libel and condemn the libellant in costs, as will more fully appear on reference to said answer, and to which, for the contents thereof, your petitioner prays leave to refer.

That thereafter such proceedings were had in said cause, that on the 10th day of October, 1871, a final decree was made and entered therein by said district court, wherein it was in substance adjudged that the libellant recover against the steamer Alabama, her engine, &c., and the steam tug-boat Game Cock, her engine, &c., the sum of $67,813.12, United States currency, with interest, and that he also recover against said steamer and said steam tug-boat the further sum of $10,008 in gold coin of the United States, and also his costs, taxed at the sum of $539.59, which on reference to said decree will more fully
358 appear. That after such final decree had been entered your petitioner duly appealed therefrom to the circuit court of the United States for the southern district of New York in the second circuit, and such proceedings were thereupon had in said cause in said court that afterwards, and on the 16th day of April, 1874, a final decree was made and entered in said court, whereby among other things it was ordered, adjudged, and decreed that said decree of the district court be modified, and that the libellant recover against the said steamer Alabama one-half of the damages reported by the commissioner in the district court, with interest, together with one-half of his costs incurred in said district court, amounting in all to the sum of $46,670.59, and that he recover against the said steam-tug Game Cock the sum of $10,250 United States currency, being the amount of the stipulations for costs and value of the said steam-tug Game Cock in this cause, and being so much of the one-half of the damages and costs which the libellant was thereby decreed to be entitled to recover herein as the value of said steam-tug Game Cock, her engine, tackle, &c., and her stipulation for costs suffice to pay, as by reference to said decree will more fully appear, and to which your petitioner prays leave to refer.

And your petitioner is advised and insists that said last-men-
359 tioned decree is erroneous in that it adjudges and decrees that the steam-tug Game Cock was in fault and contributed thereby to the collision, and that she should pay, and was thereby decreed to pay, the sum aforesaid, whereas it should have adjudged and decreed that the steam-tug Game Cock was not in fault and was not liable to pay any portion of the damages caused by said collision, and the costs of the district court, and should have reversed the decree of the district court entirely as against the Game Cock, and as to her and her claimant, should have dismissed the libel with costs. That the said decree of the circuit

court is also erroneous in so far as it adjudges the said steam-tug Game Cock to be liable for the damages allowed thereby.

Wherefore your petitioner appeals from said decree in so far as it adjudges and decrees that the steam-tug GameCock was in fault, and contributed thereby to the collision, and that she should pay by way of apportionment the sum of $10,250 as above stated, and in so far as it adjudges said steam-tug Game Cock to be liable for the damages allowed thereby, and respectfully prays that the said decree of the said circuit court, and the libel, answer, depositions, evidence, and proceed-
360 ings in the said cause may be sent to the Supreme Court of the United States without delay; and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court in so far as it adjudges and decrees that the steam-tug Game Cock was in fault, and contributed thereby to the collision, and that she should by way of apportionment pay the sum of $10,250 as above stated, and in so far as it adjudges said steam-tug to be liable for the damages allowed thereby, may be reversed, and a decree made dismissing said libel with costs, or such other decree made as to the Supreme Court shall seem just.

And your petitioner will ever pray.

Dated New York, June 2nd, 1874.

BEEBE & DONOHUE,
Proctors for the Claimant of the Steam-tug Game Cock,

(Endorsed:) Supreme Court of the United States. The Steam-tug Game Cock, impleaded, &c., appellant, ads. Nicholas de las Casas, appellee. Petition of appeal. Beebe & Donohue, proctors for claimant & appellant, 68 Wall st., N. Y.

361 Due service of a copy hereof is hereby admitted.
June 5th, 1874.

MAN & PARSONS,
Lib'l't's Proctors.

We hereby waive a bond on the within appeal.

MAN & PARSONS,
Lib'l't's Proctors.

Filed June 6th, 1874.

362 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York in the second circuit.

To Nicholas de las Casas:

Whereas William E. Gladwish, claimant of the steam-tug Game Cock, her engine, tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Nicholas de las Casas, against the said steam-tug Game Cock, her engine &c., impleaded with the steamer Alabama, her engine, &c., and has filed the security required by law; you are therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, 1874, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York in the southern dis-

trict of New York in the second circuit, the 6th day of June, in the year of our Lord, 1874, and of the Independence of the United States the ninety-eight'.

SAML. BLATCHFORD.

363 (Endorsed :) Supreme Court of the United States. The Steam-tug Game Cock impleaded, &c., appellants, ads. Nicholas de las Casas, appellee. Citation. Beebe & Donohue, proctors for appellant, 68 Wall st., N. Y.

Due service of a copy hereof is hereby admitted, June 6, 1874.

MAN & PARSONS,
Lib'l't's Proctors.

364 UNITED STATES OF AMERICA,
Southern District of New York. ss :

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 363 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Nicholas de las Casas, libellant & appellant, against the Steamer Alabama, her tackle &c., the Coastwise Company, claimant & appellant, and the Steam-tug Game Cock, her tackle &c., William E. Gladwish, claim't and appellant, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 22d day of June, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-eight'.

[SEAL.] KENNETH G. WHITE, *Clerk.*

(Indorsement on cover :) No. 201. The Coastwise Company, claimant of the steamer Alabama, &c., appellant, vs. Nicholas de las Casas. No. 202. Nicholas de las Casas, appellant, vs. the Steamer Alabama, &c., the Coastwise Company, claimant, and William E. Gladwish, claimant of the steam-tug Game Cock. S. New York, C. C. U. S. Filed 7th July, 1874.

Wm. J. Read, Law and Job Printer, 116 Fulton Street.

IN THE SUPREME COURT OF THE UNITED STATES.

Nicholas de Las Casas,
Libellant and Appellant,

vs.

The Alabama and the Gamecock,
and their claimants,
Appellants.

Brief for Libellant.

The libellant was the owner of the Spanish bark *Ninfa de los Mares*, of La Palma, in the Canary Islands.

On December 15th, 1865, she was being towed into the harbor of New York by the tug *Gamecock*. The *Alabama*, a large steamer, was leaving the harbor, and in the Narrows she ran down the *Ninfa*.

Both vessels were libelled, and in the District Court the libellant succeeded as to each.

The *Gamecock* was bonded for $10,000. The Court directed that, to the extent of the value of the *Gamecock*, the libellant exhaust her responsibility before resorting to the *Alabama* (fol. 268).

The decree was entered on October 10, 1871, for $67,813 12 currency, and $10,008 08 gold, with $1,539 54 costs (fol. 267).

The *Alabama* and the *Gamecock* appealed to the Circuit Court. That Court affirmed the decision below, holding both vessels to be in fault; but it decided that each was only responsible for half the libellant's loss. As to the half for

which the *Gamecock* was of insufficient value to respond, the Circuit Court decided that the libellant was remediless.

All parties appeal to this Court.

The facts, as found by the District, and established by the Circuit Court, are briefly as follows:

Vide *the Steamer Alabama and the Steamtug Gamecock*, 1 *Benedict*, 476, 482.

The place of the collision was a little below Fort Richmond, on the Staten Island side of the Narrows, or narrow entrance between Staten Island and Long Island to the Upper Bay of New York.

The *Ninfa* was coming from sea. She was attached to the *Gamecock* by a hawser fifty or sixty fathoms long. Her sails were furled, and she had no motion of her own. The night was clear. The collision took place about six P. M. There was a strong north-west wind, and for the sake of the smoother water, and to keep out of the wind, the *Gamecock* was proceeding about two hundred yards from the Staten Island shore.

Ninfa's pilot Watson, fols. 28–29.

The *Alabama* was a large steamer outward bound. When first seen from the *Ninfa* and *Gamecock*, she bore to the eastward, her course inclining on that of the other vessels. If the vessels had continued their respective courses, the *Alabama* would have passed the others to the eastward. The pilot in charge of the *Alabama*, came to this conclusion, and acting upon it, he starboarded his helm, until he felt sure of passing the *Gamecock*, when he ported right into the *Ninfa* (fols. 34, 307).

See diagram, page 45.

The collision was due to the want of a lookout on the *Alabama*, and to her careless management. The *Ninfa* had her lights properly set and burning, but she was not seen from the *Alabama* until the instant of the collision. Those in charge of that vessel, thought it prudent to pass the *Gamecock*, by a distance of not more than from twenty to sixty feet, porting as soon as they thought they could slip by, and thus heading directly for the *Ninfa;* and to keep on under full headway, making no provision for the possibility of there being a vessel in tow of the *Gamecock*, or of there being a vessel at anchor, immediately astern of her, as they supposed was the case with the *Ninfa*, when, just before running her down, they became aware, by a hail from the *Gamecock*, of her existence

When the tug saw the danger in which she was being placed by the *Alabama*, she, and by her direction the *Ninfa*, star-

boarded a little, all that was safe, they being so near the shore. The effect was to endeavor to get out of the *Alabama's* way, but the time was too short. The *Alabama* struck the *Ninfa* on her starboard bow, sinking her almost immediately.

FIRST.—The collision was caused by the fault of the *Alabama*. If it be assumed that the *Gamecock* was in fault the duty of the *Alabama* was not one whit relaxed. This would be so if the *Gamecock* herself invoked the rule,

Chamberlain v. *Ward*, 21 *How.*, 548.
The Gray Eagle, 9 *Wallace*, 505.
The Carrol, 8 *Wallace*, 302.
The Maria Martin, 12 *Wall.*, 31.
Inman v. *Reck, the City of Antwerp and the Friedrich*, 37 *L. J. Adm.*, 25; 2 *L. R. P. C.*, 25.

a fortiori, here it is the *Ninfa* which was herself free from fault.

Judged by any rule, it is confidently submitted, that a case of such gross mismanagement, as was proved against the *Alabama*, has rarely come before the Court; and mismanagement which was shared between the pilot and every person in responsibility, upon the boat.

(*a*) The *Alabama* was leaving a crowded port. She was in the gateway of the commerce of New York, and yet her captain (fol. 282), was in the cabin. It was a cold December night, and probably was more comfortable there, than on deck. Her mate (fol. 93), though in charge, had been down on the main deck. Smith, her second assistant engineer, who was on duty, had gone below to oil the lower part of the engine—the duty of a subordinate—and had asked another to "stand by until he came back." It was not until he could get to his place, that the engine could be fetched up and reversed (fol. 95).

The watch consisted of five men, besides the mate—three seamen, two quarter-masters and himself (fol. 92). Neither of the seamen were produced, and it was quite clear that all were at their supper at the time.

(*b*) The *Alabama* had no lookout. An attempt was made to manufacture one.

The *Alabama's* mate (fol. 93) testified that when he heard the *Gamecock's* hail (this was when the vessels

were abreast of each other) he saw a man on the forecastle, but he could not say who he was.

He said further:

"I did not stop over two or three seconds at the rail; "I then saw a man on the forecastle deck."

The *Alabama's* witness Pullen, who was at the wheel, said (fol. 89):

"I saw one man standing on the forecastle deck when "I was on the lookout; I can't say who it was."

And (fol. 89):

"There was a man on the forecastle; I saw him there; "can't say his name; he is the only one of the crew I "knew to be on deck at the time."

No such man was produced, and no one pretends that any such man was stationed as lookout; but, on the contrary, Pullen said (fol. 88):

"*I was on the lookout*, standing on the starboard side "of the pilot house, which is on the hurricane deck. * * * "The chief mate stationed me on the lookout" (fol. 90).

If there had been any such apocryphal man, he was not discharging his duties. No one pretends that he reported either the the *Gamecock* or the *Ninfa*.

It was not insisted below that any such man was stationed as lookout. The counsel of the *Alabama* repeated the old struggle to create a lookout in the person of the witness Pullen, her pilot, Martino, or her wheelsman, Madsen. Pullen called himself lookout. His real character was described by the *Alabama's* witness Madsen" (fol. 97):

"John Pullen, the other quarter-master, was stationed "near, to help me at the wheel; he was stationed at the "wheel; he had been stationed at the wheel since five "o'clock."

"Q. Which of you two, you or John Pullen, was the "one who really had charge of the wheel at the time?

"A. It was I.

"Q. What then had Pullen to do with the wheel?

"A. He was to help heave the wheel whichever way "the pilot wanted; we stood in the wheel-house at the "wheel—he on the port side and I on the starboard, and "he had done so since five o'clock; while leaving or "coming into port, we always had two men at the wheel "and two quarter-masters; this was so with the *Ala-*"*bama.*"

(*c*) A competent and vigilant lookout, stationed at the forward part of the vessel, and in a position best adapted to descry vessels approaching, at the earliest possible mo-

ment, is indispensable to exempt a vessel from blame, in case of accident, while navigating waters, on which it is accustomed to meet other water craft. The pilot-house is not the proper place, and a man charged with the performance of other duties is not the proper person.

St. John v. *Payne*, 10 *How.*, 557.
Heeney v. *Baltimore Steam Packet Co.*, 23 *Ib.*. 287.

The want of such a lookout so stationed *prima facie* proves fault.

Genesee Chief v. *Fitzhugh*, 12 *How.*, 443.

On crowded waters and powerful vessels lookouts are bound to sleepless vigilance and indefatigable care.

The Ariadne, 13 *Wall.*, 475.

Had Pullen met the requirements for a lookout, none the less was the *Alabama* in fault, for the reason that he did not see the *Ninfa*. His other duties furnished the excuse. He said (fol. 90):

"I saw no lights on the bark at all; I looked to see "whether there were any; I did not see her ten seconds "before the collision."

That the *Ninfa's* lights were set and burning was not in dispute. The *Alabama's* people testified that they did not see them. It was not probable that they would, as they did not look. But that it was possible for a person who looked, to see the *Ninfa's* lights, the *Alabama's* pilot, Martino, testified (fol.299). He also said that a ship's lights could be seen about three miles (fol. 32).

(*d*) Another, and equally fatal fault of the *Alabama*, was, that she attempted to squeeze past the *Gamecock* at full speed.

The Merrimac, 12 *Wall.*, 199.

This fault was aggravated by the absence of any effort on her part to ascertain what might be astern of the *Gamecock*.

The answer of the *Alabama* shows that she supposed the *Ninfa* to be at anchor. Her duty may be determined on the hypothesis that such was the case. She should have slowed and stopped.

"Every steamship, when approaching any other ship,

"so as to involve risk of collision, shall slacken her "speed, or, if necessary, stop and reverse."

Act of April 29th, 1864, Article 16.

For not slacking her speed, the *Alabama* was without the excuse that the lights of the *Gamecock* were not seen. Her witnesses say that the lights were seen at distances as to which their testimony ranges between half a mile and two miles.

Pullen says (fol. 90) half a mile.

Martino, the pilot, says (fol. 32), two miles or more.

Take the least of these distances, and yet there was ample time for the *Alabama* to have slackened and stopped, and so to have averted the collision. Instead of that, with the immense momentum to which her captain testified (fol. 281), making it difficult to stop her, not a thing was done to control her motion until she had the *Gamecock* abreast, and until she had been hailed from the *Gamecock* that she would be into the *Ninfa*.

Martino, her pilot (fol. 32).

The *Alabama's* witnesses testified, that, when she passed the *Gamecock*, she was only from twenty to sixty feet distant (fols. 32, 34, 292), although she had the whole width of the Narrows to the eastward; and her pilot testified, that it was usual for large vessels, in going out, to keep the middle of the channel (fol. 306).

The charge of the *Alabama* was left to her pilot, Martino. The *Alabama's* captain was careful to endorse and approve Martino and his management of the vessel (fol. 284). Martino testified that the *Alabama* cleared the *Gamecock* about twenty feet on the starboard side (fol. 292). The following passage from his testimony is better than any comment upon it (fol. 305).

"Q. How far was the tug from the *Alabama* when her "lights bore directly ahead?

"A. About thirty feet, I suppose.

"Q. Was it a safe thing then to slow the Alabama?

"A. No, sir; I don't think it was."

"Q. When an object is directly ahead, and a steamer of the size of the *Alabama* is heading directly for it, is not thirty feet pretty close quarters?

"A. It is coming to pretty close quarters, but these tugs, we don't mind them any way."

The recklessness of the pilot can be characterized in no other way than as criminal; and had the Captain of the *Alabama*, or her mate, assuming them to be prudent men,

stood by his side he would not have been permitted to pursue this reckless course. He knew the *Gamecock* was a tug-boat, and it was his duty to assume that she might have a tow. In the end it was the engineer of the *Alabama*, who happened to be on deck, who rung to back, impelled apparently by the obvious incapacity of the officer in charge (fol. 102).

The testimony of Martino, shows further that the suitable thing for the *Alabama* to have done, in addition to slacking her speed, was to have starboarded her wheel, so as to carry her away from the *Ninfa* (fol. 303).

Martino did not direct this to be done. His testimony was that he left the man at the wheel to take care of himself, and that the man of his own motion *did* starboard (fol. 292).

Though Martino says it was the safe thing to do, he also testified that he did not approve of it (fol. 305).

Was there ever testimony more conclusive of negligence than this?

SECOND.—The decision of the Circuit Court makes it to the interest of the *Ninfa* that the sole responsibility shall be put upon the *Alabama*. The *Ninfa* does not argue the case, as between the *Gamecock* and the *Alabama*, leaving that to the advocates of those vessels. The *Ninfa* does, however, insist:

(*a*) That, if the Court shall be of the opinion that the *Gamecock* was free from fault, the *Ninfa* is not estopped by the charge in her libel that the *Gamecock* contributed by her carelessness to cause the collision. The libellant sued both vessels, and the charge of negligence of the *Gamecock* in the libel is as between the libellant and the *Gamecock*. If the Court decide on that allegation against the libellant, then, for all purposes of the cause, the *Gamecock* is to be regarded as free from fault. The Court cannot put the whole responsibility of the collision upon the *Alabama*, and yet credit the *Alabama* with part of the damages, on the ground that the *Gamecock* was in fault.

(*b*) With reference to the question of fault, as between the *Gamecock* and the *Alabama*, the *Ninfa* suggests, that the *Alabama*, in hugging the Staten Island shore, was

violating the rule for large steamers, in going out, to keep the middle of the channel. The *Alabama's* pilot testified that this was the rule (fol. 356).

The *Gamecock*, therefore, is under the protection of her observance of a rule, which the *Alabama* violated, and but for the violation of which the collision could not have occurred.

Again: Whatever may have been the relative rights of the *Gamecock* and the *Alabama*, as they approached, the *Alabama* accepted the *Gamecock's* invitation that they should starboard, instead of port; or, in other words, that they should pass to the left, instead of to the right. The *Alabama's* pilot says that he determined to let the *Gamecock* pass to the westward from three to five minutes before the *Gamecock* blew her two whistles. The two whistles were blown some time before the *Alabama* reached a point abreast of the *Gamecock*. The *Alabama's* pilot says that at this time he had plenty of room to pass to the eastward (fol. 307).

All the *Ninfa's* witnesses proved, that, when they first saw the *Alabama*, she was as much as two hundred yards (six hundred feet) beyond the *Gamecock*. The *Alabama's* advocate argued below that this was *after* the *Alabama* had starboarded; that, otherwise, the *Alabama* could not have been seen from the *Ninfa* to the starboard of the *Gamecock*.

Bartolomé Mathew, fol. 38.
Jose Perez, fol. 63.
Mariano Sanches, fol. 65.
Juan Antonio Hernandez, fol. 68.
Miguel de las Cases, fol. 79.

When, therefore, the *Alabama* accepted the arrangement to pass to the left, the two vessels were at ample distance from each other.

It is doubtless the fact, that the *Alabama* determined to pass to the eastward very soon after she saw the *Gamecock's* lights, for the reason that she was then to the eastward of the *Gamecock's* course.

What caused the collision was that after the *Alabama* had determined to pass to the eastward, she ported, not giving to the *Gamecock* sufficient sea room. The *Gamecock* and her tow were so near the shore that it was dangerous for them to go farther to the westward. The duty was, therefore, upon the *Alabama* to allow sufficient room. If, instead of brushing past the *Gamecock* by a distance of only about twenty feet, she had held her starboard wheel, there would have been no collision.

The Quarantine is on the Staten Island shore. The *Ninfa* was bound from Havana, and was being towed up to Quarantine. All the *Alabama's* witnesses say that her course was about parallel with the Staten Island shore. The course of the tug and her tow was about north. The diagram in the testimony of the *Alabama's* captain (page 161), shows, that it was impossible for the *Gamecock* to get out of the way, and that the responsibility was upon the *Alabama*, which had an open channel, for crowding upon her.

THIRD.—The *Ninfa* was free from fault. She was absolutely helpless; she could sheer a little one side or the other, but she had no control of her own motion, and whatever she attempted was controlled through the hawser by the tug.

(*a*) The *Alabama's* witness Shafer (fol. 102), says, that when he first noticed the *Ninfa* he supposed she was lying at anchor. The *Alabama's* answer alleges, that the persons in charge of that vessel, did not know that the *Ninfa* was in tow of the tug (fol. 23). Their idea was that she was at anchor.

This was not the fact; but a vessel might have lain at anchor there; she might have been at the place coming to an anchor; she might, for some cause, have been drifting there, detached, and yet with her sails furled; she might have been under sail at that place; and either hypothesis serves well to illustrate the fault of the *Alabama*.

The collison would have taken place precisely the same in either of the cases suggested; and under such circumstances, what possible excuse could there be to the *Alabama*? What is claimed for the *Alabama* is that the *Ninfa* is responsible for the omission on the *Gamecock* of the two vertical lights, to indicate that she had a tow. The invisible line from the *Ninfa* to the *Gamecock* furnishes the sole pretext for fault on the part of the *Ninfa* upon which the *Alabama* relies. Cut that line; the circumstances would be just the same, and the pretext would be removed.

(*b*) Certain faults were claimed below by the *Alabama* against the *Ninfa*. It was urged that she co-operated in the arrangement with the *Gamecock* to pass the *Alabama* to the eastward.

The first answer to this is that in this arrangement the *Alabama* acquiesed. But, passing that, what could the *Ninfa* do? In the instant of the collision she obeyed the signal of the *Gamecock* and starboarded. This was right in itself, because the danger threatened on the starboard bow. To go to port, therefore, was to get out of its reach. But how could the *Ninfa* go to starboard, *i. e.*, to the eastward, when the *Gamecock* was going to the westward, and was hauling the *Ninfa's* head in that direction?

(*c*) It was claimed below that the *Ninfa* had no lookout. It was quite immaterial; but she did have a lookout.

The seamen Rodrigues, fol. 50.
Testimony of Mathew, the mate, fol. 40.
The Ninfa's witness Cabrera, fol. 65.

Furthermore, the *Alabama* was seen by the *Ninfa's* pilot when she was three miles off, and continued to be seen by him to the collision (fol. 28).

(*d*) It was claimed below that the *Ninfa* should have cast off the line. There was no time for her to do so. Had she done so the result would not have been changed. She could not back or control her momentum.

(*e*) It was claimed below that the *Ninfa* had no lights. The many witnesses examined from her testified that the lights were set and burning brightly. The witnesses from the *Gamecock* all proved the same. The only evidence to the contrary is that of the *Alabama's* witnesses, who say that they did not see the *Ninfa's* lights. This simply demonstrates that they were not looking, and, of itself, establishes a grave fault against the *Alabama*.

FOURTH.—The *Ninfa* was not responsible for the faults of the *Gamecock* if there were any. It was claimed below that there existed between the two vessels the relation of master and servant.

The faults charged by the *Alabama* upon the *Gamecock* were the omission of the two vertical lights to indicate that she had a tow; the want of a lookout; and her passing to the westward.

(*a*) Whatever may have been the engagement between the *Gamecock* and the *Ninfa* these three circumstances

were quite beyond the control of the latter vessel. On which side of the *Alabama* the *Gamecock* should pass, *she* could determine. But how could the *Ninfa* direct her? Signals could not pass; it was night, and dark. And so whether the *Gamecock* should have a lookout or proper lights was solely within her own control

It is to be remembered that the *Ninfa* was a Spanish vessel, and therefore, neither presumed nor required to know the local regulations prescribed by an Act of Congress for lights upon a tug boat having a tow.

(*b*) There is nothing in the claim of the *Alabama* that the want of a lookout on the *Gamecock* contributed to the collision. The captain of the tug testified that when he made the *Alabama* she was on his starboard bow; that she was near Robbin's reef. The vessels were then three miles apart (fol. 35). The *Alabama* was seen from the *Gamecock* from that time forward.

(*c*) The only material fault chargeable against the *Gamecock* is that she had not the two vertical lights. If *that* did not contribute to the collision, not only was there no fault of the *Gamecock* the responsibility of which to charge upon the *Ninfa*, but the whole responsibility devolves upon the *Alabama*.

It is insisted that the pretence by the *Alabama*, that the want of suitable lights on the *Gamecock* contributed to the collision, is an after thought. It may be that the general allegation of the *Alabama's* answer (fols. 23, 24), that the tugboat was improperly and unlawfully navigated, is sufficient to cover the point; but it is perfectly apparent, that had the careful pleader by whom that answer was drawn been informed of such a claim, he would have stated it in his answer. An answer—that the tugboat was improperly and unlawfully navigated, would be held bad on exceptions. The answer does allege that the fact that the *Gamecock* was towing the bark on a line could not be seen or known from the steamer before the vessels came together, or so near together that it was impossible to avoid a collision with the bark. But to justify this charge is the allegation that the night was dark. If it rested upon a want of the two vertical lights of the *Gamecock*, that fact would have been stated.

Again, though the want of the two vertical lights imposed upon the *Gamecock* the burden of showing that such fault did not contribute to cause the collision, that was done when it appeared that there was no lookout on the *Alabama*. Lights are of no service when there is no person to observe them if they are set.

FIFTH. -The *Ninfa* however, disclaims all responsibility for the *Gamecock*. Any embarrassment or conflict of authority on this point results from assuming, that from the mere fact of tug and tow, follows, or does not follow, the rule of master and servant.

The *Alabama's* advocate insisted below that in every case the tug is the servant of the tow; or, rather, that the tow is the employer of the tug. Numerous cases can be found going to the same extreme in the opposite direction.

The conflict can be easily reconciled by remembering that the true consideration is, what is the actual arrangement between the two vessels. PARSONS says: "The question has arisen, when a vessel is in tow of a steam tug, and a collision occurs with another vessel, which is responsible, the steam tug or the vessel in tow? It is obvious that two perfectly distinct views may be taken of the relation between them. According to one, the vessel towing is but the servant of that which is towed; this latter is the master, and is responsible for the acts of the former, as its servant. According to the other, the vessel towed is, for the time, under the absolute control of the vessel towing; and this latter is, therefore, responsible for any mischief done. We apprehend it to be an error to assume that either of these relations must exist in any particular case. The inquiry should always be, which party is the principal and which the servant. And wherever the relation of principal and agent exists, the case should be decided on the principles of agency."

1 *Parsons on Shipping and Admiralty*, 534.

The authorities are cited; but so correct a statement demonstrates itself. The distinction is well established in a series of New York Common Law cases, holding that where the alleged servant is working under an independent contract, in control of his own actions, the rule of master and servant does not apply.

Blake v. *Ferris*, 1 *Selden*, 48.
Pack v. *The Mayor, &c.*, 4 *Seldon*, 222.
Kelly v. *The Mayor, &c.*, 1 *Kernan*, 432.

And the Admiralty rule may be regarded as settled by this Court against the *Alabama*.

Cushing v. *The John Fraser*, 21 *How.*, 184.
Sturgis v. *Boyer*, 24 *How.*, 110.

It was suggested for the *Alabama* that the case was analogous to that of the responsibility of a vessel for her pilot. A reference to the cases establishing this responsibility, however, will show that they proceed upon the very ground, that

the officers of the vessel can and should watch the pilot, and, if necessary, supersede him.

The China, 7 *Wall.*, 53, 67.
The Merrimac, 14 *Wall.*, 199.
The Argo, 1 *Swabey*, 464.
The Christiana, 7 *Moore P. C.*, 192.

SIXTH.—The liability of the *Alabama* having been established, her advocate argued below that after the collision the *Ninfa* was remiss in not adopting suitable measures to make the loss as little as possible. The cla m is that the *Ninfa* could have been raised. No assistance whatever was received from the *Alabama;* no suggestions made by her. Responsible for the collision, she held back, biding her time, until the efforts made to raise the *Ninfa* were complete, and then found fault with them. In fact, however, such efforts as were scarcely ever in any other case attempted were used to raise the *Ninfa*.

She was sunk on the evening of December 15th, 1865; her captain was a foreigner, never previously in New York; yet on the succeeding day he had perfected arrangements for raising his vessel. He called first upon the leading New York firm of average adjusters, Johnson & Higgins, and was referred by them to the Coast Wrecking Company, as being—as, in fact, it was—the most prominent of the wrecking organizations, and on the same day he effected with them a contract to raise the vessel (fol. 251).

In the view not only of Captain Merritt, the superintendent of that company, but of Major Perry, the company's agent, who had charge of the job (his testimony, fol. 239), and of other experienced parties as well, the danger to be apprehended from storms and ice made it impossible to raise the *Ninfa* at that season of the year, by the assistance of pontoons and of the usual wrecking appliances, and the only chance was that possibly the weather might hold long enough to permit a derrick to take hold and try to raise her. This was attempted, and failed. Captain McDonald, of the derrick, was one of the *Alabama's* witnesses, to prove that the *Ninfa* could have been raised. Of course he shifts the blame of the failure from himself; but the fact is, that he tried and failed. The Coast Wrecking Company then declined to proceed until Spring. The reasons appear by the evidence. In the end that Company lost about $14,000 in trying to raise the *Ninfa* (fol. 229).

It will thus be seen that there was every motive of interest (they were liable upon their contract) to lead them to use all reasonable means to raise the *Ninfa*. The libellant did all he could to force the Wrecking Company to proceed, and on December 29, 1865, wrote them that they would be held responsible for any loss due to their delay (fol. 251). That they still declined to proceed is the best evidence how unreasonable it is to claim that they should have done so.

The libellant's agents, however, not content with this, early in January called upon the Columbian Wrecking Company (the only other wrecking organization), and met from them the same response, that nothing could be done until Spring. On March 16, 1866 (fol. 243), the Coast Wrecking Company began, and thence till May 11, 1866, they continued to make every possible effort to raise the *Ninfa*, and failed.

Major Perry, who had charge of the job, says that it was impossible to raise her. This should dispose of the question; but the agents of the libellant did not even rest here. They again applied to the Columbian Company. That Company declined to make any salvage contract. They demanded $10,000 *sure*, which Mr. Goff (of Messrs. C. Marti & Co., the libellant's agents) offered to pay, if they would agree not to tear the vessel to pieces. As they declined to make this agreement, as Captain Merritt had stated to Mr. Goff that the vessel could not be raised without being torn to pieces, and as no arrangement could be made with any party to raise her on salvage, however considerable, Mr. Goff declined to submit to the sure loss of paying $10,000 and getting nothing for it. Had he done so, the libellant must have sustained the loss, as the Court would not, against such evidence as that of Captain Perry in this suit, justify his putting the claimants to an expense exceeding the value of the parts of the *Ninfa* which should be raised.

Mr. Goff did not, however, rest here. He found a man named Beers who was willing, for fifty per cent. salvage, to try and save the specie. He did succeed in obtaining from the cabin of the *Ninfa* a purse containing nine doubloons, probably dropped in the confusion and hurry with which the escape from the *Ninfa* was made.

Captain Merritt had declined to try and save the specie—the risk to the diver, in his judgment, being too great. But this was not all. Mr. Goff then made a contract with Beers to save the vessel. He tried and failed; then made a contract with a man to save what he could; he tried, and saved nothing. It must be borne in mind that the *Ninfa* lay in the strength of all the water forcing its way through the Narrows, making it impossible to work, except at the slack of the tide, and then only in favorable weather.

These facts all appear on the cross-examination by the *Alabama* of Mr. Goff, the *Ninfa's* agent (p. 129, *et seq.*).

What is the answer to this evidence. It is three-fold:

(*a*) The testimony of a man named Brown, who, from 1843 to the date of his examination, was for about six months engaged in the wrecking business, that the *Ninfa* could have been raised.

It turned out that this man had been employed by the Company which succeeded the Columbian. The Columbian Company was applied to, and expressed its inability. As Brown was not in the business at the time, it is not clear how there could have been any remissness on the part of the libellant in not securing his services.

(*b*) The testimony of Captain McDonald that he could have raised the *Ninfa*.

What the libellant knew in reference to him was, that he had tried and failed. His principal business was to lift, about the docks and piers. And there is this further fact to be remarked, had the libellant been directed to him, and had he then been of the same mind as when examined—which is quite improbable—that, to try and lift the *Ninfa* until her deck should be out of water, Captain McDonald wanted *sure* eight or ten thousand dollars, which shows that he deceived himself when he said that he thought two derricks (all he had) could have raised her, he being willing to take $2,500 for the use of one derrick.

(*c*) Evidence that, *as the season turned out*, there were intervals of fair weather, by availing of which from time to time the *Ninfa* might in the end have been raised, before the mud made it impossible.

The answer to this position is pertinent also to Captain McDonald's statement of what he could have done. Both the libellant and the Coast Wrecking Company were compelled to rely upon the probabilities of what the season would be. The Company was the leading Company, and their judgment, as well as the judgment of the only other Company was, that it was impossible to make the attempt until, as it turned out, success had become impossible. Had the judgment of the Coast Wrecking Company and of the other wreckers been erroneous, it would be a very harsh rule which would make the libellant, he acting in good faith, suffer; but their judgment was not erroneous. It is a case of the opinion of the most capable men in the business, whose competency is conceded, whose judgment

was confirmed by their acts, at a loss to them of $14,000, against the mere speculative opinion asserted boldly by Brown, whose incapacity is apparent, who was the only man the claimants could rake up, and of Captain McDonald, who, just in proportion as did he have the requisite capacity, does he speak distrustfully.

SEVENTH.—The *Alabama* excepted below to the value of the *Ninfa*, as reported by the Commissioner and adjudged by the District Court, $50,000. It is the libellant, not the claimants, who have cause to complain of the valuation. There was a long contest over the material of which parts of the *Ninfa* were built—the *téa*. All the witnesses who had ever seen the *téa* testified to its value for shipbuilding purposes. Mr. Poillon, the leading shipbuilder in New York, who had repaired Canary Island vessels, proved the high character of their materials.

(*a*) The actual loss to the libellant was not disputed. That was the *Ninfa's* home value in the Canaries or at Havana, which was proved to be as follows, the estimates of the different witnesses being reduced to currency at the stipulated $1.50 to the silver hard dollar:

Miguel de las Casas, . . .	$35,000 to	$36,000 =	$52,500 to	$54,000
Edward Morales, ...	40,000 to	45,000 =	60,000 to	67,500
Rafael Garcia, ...		40,000 =		60,000
Eloy F. Camacho, ...		50,000 =		75,000
Mariano Cabrera Hernandez,		40,000 =		60,000
Nicholas de las Casas, . .		40,000 =		60,000
Gayetano Felipe Cardenas,		40,000 =		60,000
Jose Anna Rodriguez Gonzales,	38,360 to	42,930 =	57,540 to	64,395
Ignacio Rodriguez Gonzales,	"	" =	"	"
Jose Buenamenti Gonzales,	42,000 to	43,000 =	63,000 to	64,500
Jose Mendoza Morales, . .		42,630 =		63,945
Jose Miguel de las Casas,		42,630 =		63,945

These witnesses all knew the *Ninfa*, knew her exact cost, and exactly what she was worth.

(*b*) The libellant's witnesses, who alone had seen the *Ninfa*, and Mr. Poillon, who knew her materials, confirm, at New York, the above evidence of her home value. The following are their statements:

Miguel de las Casas, ...	$60,000 to $80,000
Edward Morales, in September, 1867, ...	55,000 to 60,000
Raphael Garcia, ...	60,000 to 70,000
Eloy F. Camacho, $110 a ton (say 600 tons), . .	66,000
Richard Poillon, ...	63,945
Michael Morrow, ...	70,000 to 75,000
Samuel C. Shepherd, ...	65,000 to 70,000

The Commissioner reported the value of the *Ninfa* in the Canary Islands, and transferred that amount into United States currency. The *Alabama* excepted that the value in New York should be taken. The District Court referred the case a second time to the Commissioner, and, on the re-hearing, in addition to the above testimony, the libellants examined Mr. Ambrose Snow, of the leading shipping firm of Snow & Burgess, and Mr. Benjamin J. Wenberg, for twenty years a prominent ship broker; both of whom testified that the *Ninfa* was worth sixty to seventy thousand dollars. The Commissioner then reported her value in New York at $50,000 (fol. 260).

On the first hearing before the Commissioner, Mr. Poillon had erroneously stated the Spanish foot to be thirteen instead of eleven English inches; and it was assumed that he had in consequence made a mistake in his estimate of the size of the *Ninfa*. On the re-hearing, he gave a calculation showing the carpenter's construction measurement of the *Ninfa* to be about 609 tons (fol. 232). Mr. Poillon's mistake was in his statement, not in his calculation. The claimant's witness Pyne testified, that $90, carpenter's construction measurement a ton, was a fair price (fol. 112). At 609 tons, it will thus be seen that the valuation would be $54,810, or more than the Commissioner allowed. Much of the difference in the estimates of value of the *Ninfa* depends upon the tonnage which is taken, whether Custom House—and, in that case *old* or *new* measurement—or carpenter's construction measurement. The witnesses, Pyne and Steers, examined for the claimants, reached their estimate of the *Ninfa's* tonnage by a process different to that used by Mr. Poillon, and which however correct, when applicable to large vessels of the size built by those gentlemen, Mr. Poillon explained was not correct when applied to vessels of the *Ninfa's* size. At the figures furnished, however, by either of those witnesses, and at a valuation of $130 a ton, which all the evidence demonstrates to be a reasonable figure, the *Ninfa* was well worth the sixty to seventy thousand dollars, to which many witnesses swear as her value.

EIGHTH.—The decree of the District Court in condemning both the *Alabama* and the *Gamecock*, with a provision that on the payment by the claimants of the *Alabama* of the

amount of the decree, less the value of the *Gamecock*, the libellant's proceedings be stayed against the *Alalama* until the return, unsatisfied, of on execution against the *Gamecock*, was correct. The decree was drawn in exact conformity with the decree of the Circuit Court in the case of the *Washington and Gregory*, 2 *Benedict*, 227; affirmed in this Court (9 *Wall.*, 513–6).

The rule contended for by the *Alabama* that each guilty vessel is liable for only half the loss of the innocent vessel rests upon what is supposed to have been decided by the High Court of Admiralty, in England, in the case of the *Milan*, 1 *Lush.*, 388. The cases in the District and Circuit Courts which favor the view urged by the *Alabama* rest upon the supposed authority of that case.

The Atlas, 4 *Ben.*, 27; *affirmed*, 10 *Blatch.*, 459.
The City of Hartford, 11 *Blatch.*, 290.

The present case differs in essential respects from the case of the *Milan*, and also, as is believed, from the cases which have followed what is supposed to be its doctrine.

(*a*) There is nothing in the report of that case to indicate that either vessel was not able to respond for its half. In that situation, the equity between two offending vessels can prevail without injury to the innocent party.

(*b*) In the case of the *Milan*, the libel was filed by the owner of cargo on the *Lindisfarne*. He sued both vessels; both were held in fault; and the decision proceeds upon the principle, that by a technical Admiralty rule, the owner of *cargo on a vessel in fault* can only recover against the other vessel the one-half of the loss. He must resort, absolutely, for the other half, to his own vessel.

The most that can be claimed from the case of the *Milan*, is that the Court will determine the case, as between all three parties concerned, with reference to the equity, that, unless necessary, neither offending vessel shall be compelled to pay more than one-half the loss. The enforcement of this equity may result in inconvenience. This, by the law, the libellant must submit to; but, neither in the case of the *Milan*, nor in any other case in which the attention of the Court has been called to the distinction, if in any other case at all, has it been held that the adjustment of the equities between the two wrong-doers shall result in loss to the innocent party.

This equity is entirely subordinate to the primary consideration, that the injured party is entitled to full reparation. As between the two vessels, the rule should be applied when no harm can result to the third; but it would be a violation of all

law, and equity as well, that an unoffending party shall suffer in the settlement of the equities between the wrong-doers. The common law rule will not be gainsayed; where more than one person participates in a wrong, each is fully responsible.

Guille v. *Swan*, 19 *Johnson*, 381.
Colegrove v. *N. Y. & Harlem and N. Y. and New Haven R. R. Cos.*, 6 *Duer*, 382; *affirmed* 20 *N. Y.*, 492.

The same has been held to be the rule in Admiralty,

The Express, 1 *Blatchf.*, 365;

suit against a tug alone. Libel dismissed in the District Court, on the ground that the tow was in fault. The decree reversed by Judge NELSON, and a full recovery permitted against the tug, though the tow also was in fault.

Brady v. *The New Philadelphia*, 1 *Black.*, 62; at page 76, the Court said: "The rule of law is that when a third party has sustained an injury to his property from the co-operating consequences of two causes, though the persons producing them may not be in intentional concert to occasion such a result, the injured party is entitled to compensation for his loss from either one or both of them, according to the circumstances of the incident."

The Washington and the Gregory; supra.

The cases of the *Atlas* and of the *City of Hartford* are asserted to favor a different view.

To affirm the District Court in this cause it is not necessary to reverse the doctrine established by those cases. The attention of the Court is respectfully urged to this argument. Conceding the equity, it is for the one of the wrong-doing vessels which invokes it, to make out a complete case upon which the equity may be successfully claimed, without harm or hardship to the innocent and unoffending vessel. Here the decree of the District Court compels the *Ninfa* to exhaust the responsibility of the *Gamecock*. What larger right is it possible for the *Alabama* to have? It was said that the owner of the *Gamecock* may be personally responsible. There are two answers to any argument in favor of the *Alabama* to be deduced from that proposition:

(*a*) The owner of the *Gamecock* was not responsible beyond the value of his vessel, and that under the District Court decree, is to be reached.

9 *U. S. Statutes at Large*, 635.

To make the owner personally responsible, it must be established (section 3), that the act, matter or thing com-

plained of was with "the privity or knowledge of the owner." If the *Alabama* had sued the owner of the *Gamecock* to recover damages beyond the value of the *Gamecock* to make out her case, she must establish the privity or knowledge of the owner. Nothing of that kind was done here; and, on the contrary, the case showed that the fault of the *Gamecock* was the fanlt of her crew, which excludes the personal responsibility of the owner.

Norwich Co. v. *Wright*, 13 *Wall.*, 104.

(*b*) A second and effectual answer is, that it does not appear that the owner of the *Gamecock* has, or had, any pecuniary responsibility. For aught that appears to the Court he may be absolutely without means. If the *Alabama* insists in her interest that half the loss must be obtained from the owner of the *Gamecock* by the *Ninfa*, she must show that the *Ninfa* could recover such half from him—that he was personally able to respond for such half.

This consideration must be conceded. The *Alabama*, in her own interest, claims the equity. The burden is upon her to show, in diminution of the libellant's claim, that the *Ninfa* could have recovered from the joint wrong-doer the amount for which the *Alabama* claims a credit; and this is not made to appear until it is established, in the first place, that the libellant could in law have made out a case for complete indemnity in respect to the one-half against the *Gamecock and her owner;* and, in the second place, that on a recovery, the amount could have been collected. The most which can be claimed to have been established is, that the innocent party should be put to the inconvenience of accommodating to the settlement of the equities between the two other vessels. No principle and no case go so far as to hold, as claimed for the *Alabama*, that the result of this settlement shall be loss to the innocent party.

NINTH.—The decree of the District Court should be affirmed, with costs to the libellant.

JNO. E. PARSONS,
for the Libellant.

Supreme Court of the United States.

No. 202.

THE STEAMER ALABAMA, HER ENGINE, TACKLE, &c., the Coastwise Company, claimant and appellant, impleaded with the steam tug-boat Game Cock, her engine, &c.,

ads.

NICHOLAS DE LAS CASAS, Libellant and Appellee.

BRIEF

FOR THE STEAMER ALABAMA.

EDWARDS PIERREPONT,
Of Counsel for Plaintiff.

Judd & Detweiler, Printers.

Supreme Court of the United States.

No. 202.

THE STEAMER ALABAMA, HER ENGINE, TACKLE, &c., the Coastwise Company, claimant and appellant, impleaded with the steam tug-boat Game Cock, her engine, &c.,

ads.

NICHOLAS DE LAS CASAS, Libellant and Appellee.

BRIEF

FOR THE STEAMER ALABAMA.

EDWARDS PIERREPONT,
Of Counsel for Plaintiff.

STATEMENT.

Ten years ago last December the Spanish barque Ninfa was sunk in the Narrows near Fort Richmond, and between one and two hundred yards from the Staten Island shore. The barque came in collision with the steamer Alabama, outward bound, on her way to New Orleans in the dark evening of a short December day.

The Alabama was a large seagoing steamer laden with passengers and freight of great value. The

barque had no cargo, but was in ballast, coming into port in tow of a little steam-tug, the *Game Cock.*

The barque had no forward motion of her own, all her sails were furled, and she was towed by a hawser about 400 feet long. She had all her officers and crew aboard, and also a pilot, who had command of her and directed how she should be steered. The tug had no control over the movement of the bark except by the towing hawser.

The night was dark, the wind was brisk northwest, direct ahead of the tug. It was flood-tide, the barque was small, and with the wind northwest they sought to tow her along the west shore, because the water is smoother and the towing easier, and for pure convenience they sought to hug the west shore, and to do so they attempted to cross the bow of the Alabama, contrary to law and to the rules of the harbor. They miscalculated the distance and the speed, and though the tug crossed the bows of the Alabama they hauled the barque (without a signal-light, which the law requires,) direct upon the Alabama's course, and by their reckless carelessness in having no signal lights to indicate a tow, and in their unlawful efforts to cross over and get into smoother water, for their mere convenience, caused and *entirely* caused, the accident.

REMARKS.

The *Alabama* was a large steamer, sailing out of the harbor of New York, at night, laden with freight and passengers. Her officers were entrusted with immense interests, and both they and the pilot were men of great experience and unquestioned skill; that they should have been careless of her safety or negligent of their great duty is not to be presumed, and re-

quires the clearest proof before such negligence can be credited. Every motive which could influence men in their situation would prompt to the greatest care and circumspection.

FIRST.

The *Alabama* cannot be condemned without satisfactory proof that she was in fault. Fault can only arise from some duty neglected or some wrongful act done.

We submit, with entire confidence, that the *Alabama* was without fault.

As no willful wrong is charged, the question is one of negligence.

In considering the question of negligence, the laws of nature, necessities of the case, experience, customs and established rules of navigation in particular harbors will receive attention.

SECOND.

The charges in the libel and the proofs taken make it clear that the *Alabama* was not in fault.

At page 1, fol. 2, the libel states that the "bark was in tow of the tug-boat *Game Cock*," * * "the movement of the bark being *wholly dependant on said tug-boat*," that some 10 or 15 minutes previously to collision, "the *port light* of a steamer, which afterwards proved to be the *Alabama*, was observed from the said bark," and that they were "apparently approaching in an opposite direction."

NOTE.—The libel expressly charges that the *port light* of thesteamer was first observed from the *bargue*.

These explicit statements of the libel are very important.

1st. That the bark was in tow of the tug.

2d. That "the movement of the barque being *wholly dependant on said tug-boat.*"

3d. That "the *port light* of the steamer was observed from said barque."

4th. That they were "apparently approaching *in an opposite direction.*"

Each of these *four* statements in the libel filed against us is strictly true. The evidence is complete.

The Answer of the *Alabama* expressly admits that the *tug* was at a distance first discovered bearing on the *Alabama's port bow.*

These are the words of the Answer:

65 *Third.* * * * That before and at the time of the said collision her lights were set set and burning, and she was going at a slow rate of speed, and had a competent lookout properly stationed, and faithfully attending to his duty, and her officers and men were at their regular and proper stations on deck, to transmit and execute orders with promptness, and every possible precaution had been and was used to avoid collisions and other accidents.

Fourth.—That while the said steamer *Alabama* was so proceeding to sea, and shortly after six o'clock p. m., when near Fort Richmond, in the Narrows, the
66 aforesaid tug-boat was discovered, a considerable distance off, bearing on the steamer's port bow; that as the vessels approached each other the tug-boat changed her course suddenly and unexpectedly,

without giving any proper signal or warning of her intention to do so, and attempted to cross the steamer's bow and pass on her starboard side. That as soon as such intention was manifested every effort was made on the part of the steamer which could have been to avoid a collision, and the said steamer did, in fact, clear the tug-boat, but collided with the barque.

Fifth.—That the said tug-boat was at the time towing the barque *Ninfa de los Mares*, astern, on a line or hawser of about one hundred and twenty yards 67
in length; that the night was dark, and the fact that she was so towing the barque on a line could not be seen or known from the steamer, before the vessels came together, or so nearly together that it was impossible to avoid a collision with the barque.

That the barque had all her sails furled, and could not be distinguished from a vessel at anchor. That she had no sufficient *or proper lights set and burning;* that she had no competent lookout stationed and attending to his duty, and no proper man at the helm, and no warning was given that she was moving astern of the tug-boat. That she was not properly steered or navigated, and she was in these and other respects in 68
fault, causing the collision.

* * * * *

Eighth.—The claimants also deny the allegations 69
of the fourth article; on the contrary, they aver that the barque was responsible, under any circumstances, for the conduct of the tug-boat, and that the said tug-boat and the said barque were, respectively, improperly and unlawfully navigated, and that the collision occurred through the fault and improper navigation of the barque individually or in common with the fault of the said tug-boat, and not by the fault or

negligence of the steamer; that everything was done on the part of the steamer which was possible, to avoid the said tug-boat and her tow.

THE EVIDENCE.

George S. Walson, pilot of the barque, says, (p. 15, fol. 28:) "When I first saw the Alabama she was above Narrows and we half way to west bank; I saw a *red light*, say three miles off."

At (p. 16, fol. 29,) he says: I saw *red* lights all the time till collision; *it was more on starboard bow at time of collision.*"

[*Note.*—Of course it was.]

Mr. Pullin, the quartermaster, was on the *lookout*, (p. 50, fol. 88;) saw the tug at a distance; "she bore about a point on our port bow," (p. 50, fol. 88.)

Mr. Martino, the pilot, also saw it *on port bow*, (p. 18, fol. 32.)

Mr. Marsden, the other quartermaster, was at the wheel, says: "The tug's lights bore about a point on our port bow," (p. 55, fol. 97.)

Mr. Martino, the pilot, further says: He saw the tug two miles off. "I saw all her lights, and saw them *on our port bow*," (p. 165, fol. 290.)

Mr. Shafer was on deck by the pilot-house; the pilot called his attention to the tug's lights; "they were off on the *port bow*," (p. 57, fol. 102.)

Thus, the proof is overwhelming that when the tug and the steamer Alabama first saw each other the *red light* of the steamer was seen by the tug, and that the tug's lights were seen over the *port bow* of the Alabama; and that the distance between them

was at least two miles, (*Martino*, p. 165, fol. 290;) that the steamer was going about south, and the tug about north, *nearly parallel with the shore*, (p. 18, fol. 33;) that the steamer's *port light* was *red*, and that the tug had no signal lights to indicate a tow, as the law directs, (p. 50, fol. 89.)

THE EVIDENCE ESTABLISHES THE FOLLOWING FACTS:

I. That the Alabama was a large steamer, going down the Narrows on her way to New Orleans, at a slow rate of speed, steering about south, parallel with the Staten Island shore, and keeping as near the shore as safety would permit, and as the law directs.

II. That she was perfectly officered and manned, *with competent lookout*, with all her lights set and brightly burning, and that all reasonable and lawful care was exercised to the fullest extent.

III. That she descried the steam-tug some two miles off over her *port bow;* that she kept near the shore, and did not change her course until just before collision, and then only to avoid the collision which the rash and unlawful course of the tug was about to cause.

IV. That if the tug had not suddenly changed her course they would have passed port to port unharmed; but that the tug, having a northwest wind direct ahead, suddenly changed her course, and made for the Staten Island shore for easier towage, and, miscalculating the distance between her and the steamer, (although she passed herself,) was not able to drag the tow across the Alabama's bows in time to avoid collision.

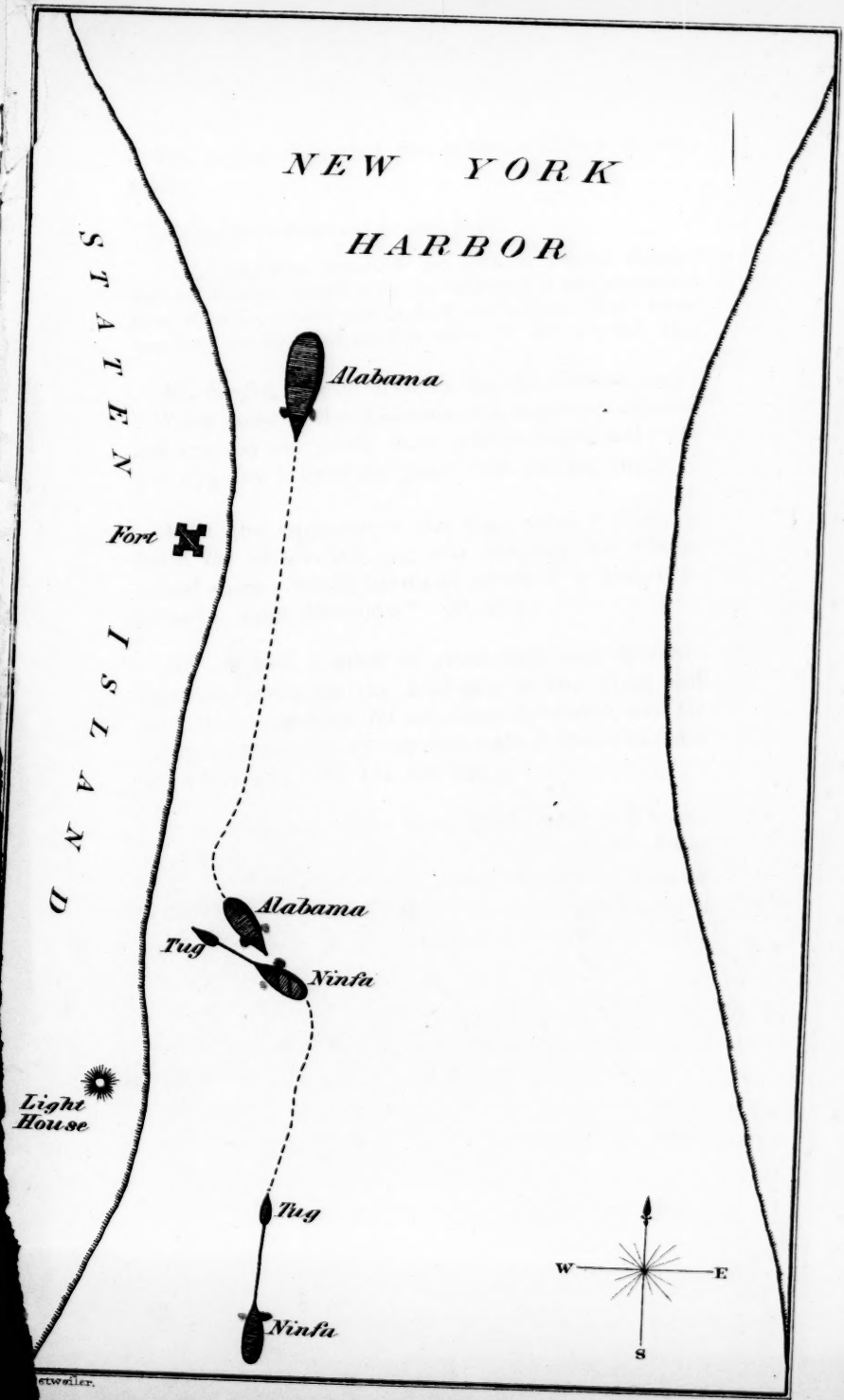
V. That neither the tug or the barque had any signal lights, as the law requires, to advise other vessels that the tug had a tow, and the steamer, having no such notice, supposed that the barque (having her sails all furled) was "*at anchor*," and not moving towards her until the moment of collision.

VI. That the Alabama was not in fault, but the collision was caused entirely by the fault and the unlawful acts and negligence of the barque and her employed servant and motive power, the tug.

Insisting, as I do, that the Court below either never read or never fairly considered the evidence in this case, I make very liberal *verbatim* citations.

The following diagram is taken from page 161 of the Record.

The steamer, the tug and barque being placed in the position in which they were when each was first seen by the other, and also at the time of the collision.


NEW YORK
HARBOR
STATEN ISLAND
Alabama
Fort
Alabama
Tug
Ninfa
Light House
Tug
Ninfa
W
E
S

The course of the tug just before collision is certain.

Mills, the *engineer of the tug*, says:

"The tug was heading for Staten Island shore; toward shore; *would have run ashore if it had continued same direction;* had not looked out before; *don't know how long she had been on that course.*" (P. 17, fol. 31.)

Mr. Shafer, was on deck by the pilot-house, says: "When close to the Alabama, the tug-boat sheered and crossed our bows from port to starboard; *she was very close to us at that time.*" (P. 57, fol. 102.)

Mills, the engineer of the tug, says: "*When he heard the whistle*, the tug was heading for Staten Island shore; would have run ashore if it had continued in same direction." (P. 17.)

Mr. Martino, a pilot of great skill and 35 years experience was on the Alabama at the time, and says: "the *Alabama did not change her course, until the tug changed her course when close to the Alabama and shot across her bows.* (P. 105, fol. 291.)

John Riley, one of the *Game Cock*, says: "Was on after deck; alone; was sent there to look after hawser; *it was* 65 *fathoms long;* fastened to bitts at stern in center; *when heard whistles* we was heading *right in shore;* would have brought up if continued on." (P. 17, fol. 31.)

Thus we have the positive proof from the other side themselves as to the course of the Game Cock and her tow, *when the whistles were blown.*

The Master and Pilot of the Ninfa both reveal the reason for this apparent freak and clearly illegal course of the barque and the tug.

Las Casas, the master of the barque says: "There was a wind from the northwest or north-northwest, a head wind for us, and blowing pretty fresh." (P. 44, fol. 79.)

And *Rodriquez*, of the Ninfa, says: "*the wind was ahead.*" (P. 27, fol. 50.)

Watson, pilot of the *Ninfa*, says: "We always tow small vessels along west shore *with wind from west*; *the water is smoother; it is easier towing;* to east of us across Narrows is 17 or 18 fathoms deep, not less than ten deep for *whole mile of width.*" (P. 16, fol. 29.)

"There was no reason for Game Cock hugging west shore except *practice* and for *convenience;* plenty of water eastward; *all channel.*" (P. 16, fol. 30.)

Several witnesses speak of seeing the Alabama on their *starboard after the whistles.* Of course she was on the starboard after the Game Cock made for shore, and she *did not blow her whistles till she had changed her course* and passed the Alabama's bows. She must then needs be on the starboard. The testimony of the other side proves this also.

Mathew, mate of the Ninfa, says when he *first* saw the Alabama, "it was just at the time the Game Cock blew her whistle." * * "I saw her over our starboard bow." (P. 21, fol. 38.)

Castro, on the Ninfa, says: "I did not see the Alabama *before the whistles;* immediately *after*, shortly *after*, I saw her; she was then coming towards us on *starboard* bow." (P. 32, fol. 58.)

Sanchez, of the Ninfa: "I did not see the Alabama

before the whistles. Saw her to starboard." (P. 36, 37, fol. 65, 66.)

Hernandez: "I did not see the Alabama *before I heard the whistles.* Alabama on starboard bow." (P. 38, fol. 68.)

Las Casas, the master of Ninfa: "I saw the Alabama *when* the Game Cock *blew her whistle*; it was a *double whistle.*"

"When Alabama struck us we were within 100 yards of the shore." (P. 44, fol. 79.)

Mills, engineer of Game Cock: "First heard *two* whistles from Game Cock, looked out on *starboard*, saw something coming down." (P. 17, fol. 31.)

Marsden, quartermaster of Alabama: "I heard a whistle from the steam-tug *after she had crossed our bows.* I saw her after she had crossed the bow. I don't remember how many blasts." (P. 55, fol. 97.)

Martino, the experienced pilot of the Alabama, says that *after* they cleared the tug, "this *further occurred*, the tug blowed *two whistles*, which meant for us to starboard." (P. 165, fol. 292.)

Neither the tug or the barque having any signal-lights to indicate a tow, as the law requires, and the tug having cleared the Alabama, the pilot was confused to know what the tug meant by blowing his two whistles to starboard, when he was already clear. If the tug and the Ninfa had *obeyed the law* and had their signal-lights, no collision would have happened. The Ninfa was *seen*, but having no signal-lights, and sails furled, she was supposed to be *at anchor*, and not moving by a hauser, 390 feet long, across the Alabama's course. No such notice was given; no sig-

nal was up, and no such suspicion awakened until after the tug had cleared, blown two whistles, and finally sung out, *after* she had passed—*after* her whistles were blown.

The pilot, Martino, says: "I was partly confused at the time *on account of his blowing his two whistles, knowing him to be clear* of our bow. He was then *on our starboard bow.*" (P. 169, fol. 312.)

"I did not leave the man at the wheel to take care of himself; I stood alongside him, and when the tug blowed the two whistles, says I 'that means to starboard, and *I want to know what he means by it;*' that was my conversation with the quartermaster; when he blew his two whistles at the same time right after it, he sung out, 'look out, or you will be into that tow astern of us;' at the same time I told the engineer to slow, stop, and back the ship; the barque then was two points on our port bow." (P. 169, fol. 304.

Mr. Shafer, the chief engineer of the Alabama, was at pilot-house: "As the tug-boat crossed the bows of the Alabama, I noticed a vessel off on our port bow; I saw no lights, and supposed she was lying at anchor; she was far enough off our bow to have allowed our steamer to have passed her if she had been lying at anchor, by two or three of our ship's lengths off, if not more." (P. 58, fol. 102.)

The assurance of the Ninfa and the Game Cock is, at least, remarkable, they having violated the laws of navigation and the rules of the harbor, and by their unpardonable negligence having misled the Alabama.

THIRD.

Law and facts which are undisputed.

It is undisputed law that a vessel, moved by steam, going out of the harbor of New York, must keep on the Staten Island shore, *to the right.*

That a vessel, moved by steam, entering the harbor, and approaching another "end on," or nearly so, must also keep to the right, and that the two must pass port to port.

That if the tug and Ninfa approached across the line of the Alabama, having the Alabama on their own starboard, then the law is clear.

"If two ships, under steam, are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other."

(Act of Congress, Stat. at Large 13, p. 60.)

That when a tug has a vessel in tow, the law requires that special *prescribed vertical lights* shall be set to indicate the tow.

That a vessel, full manned, and with her own pilot on board, hiring a tug to move her, is responsible for her motion.

It is in this case undisputed *fact* that there were *no lights whatever* to indicate a tow.

That after the tug threw the Alabama on her own starboard, though she did get herself "out of the way of the other," she drew the tow (without signal lights, and with all sails furled, as though at anchor,) *right in the way* of the Alabama.

That until the tug sheered towards shore, "the *port light* of the Alabama was observed from the barque, and that they were apparently approaching

in an opposite direction;" that the barque had all sails furled, as though at anchor, "with no movement of her own, but wholly dependent on said tug boat," as the libel charges and the evidence proves.

That just before the collision occurred, "the tug was steering directly towards shore; would have gone ashore, if she had continued her course." That the Alabama was thus thrown on the starboard side of the tug, and that the tug did not blow her whistles until she had passed the Alabama, and that having passed, and having no signal lights to indicate a tow, the pilot was confused to know what the two whistles were blown for, the tug having already cleared the steamer, and the barque, lying at a distance with sails all furled, apparently at anchor, and without the slightest indications that she was in tow.

That the Ninfa had her captain, mate, officers, and crew all on board, and also a regular pilot, and even the channel was a mile wide where the collision happened, (p. 16, par. 29.)

FOURTH.

When a barque full manned, with officers and crew, under her captain's orders, and with her own pilot on board, furls her sails and hires a tug as her motive power, the *law requires* that specific, *prescribed signal lights* shall *indicate* the fact that she is in tow—that she is moving and not at anchor. And the law is, that when thus moved by a little tug attached to a long hawser, (however slow her movement,) if through neglect of the prescribed signal lights she misleads another vessel by appearing with furled sails as though at anchor, and thus causes a collision which would have been avoided if she had

obeyed the law, and had up her signal lights, such barque is liable for the collision which her disobedience to the law and her deception to the colliding vessel has caused.

I now come to the opinion of the judge below:

WOODRUFF, *Circuit J.:*

Notwithstanding the ingenious argument of counsel in behalf of the appellants herein, careful and repeated examination and scrutiny of the testimony results in the conviction that the collision in this case was caused by the mutual or contributory fault of the Alabama and the Game cock. The former had no proper lookout. *She ought to have seen the bark in tow of the Game Cock in season to avoid her.* The proofs are convincing that the lights on the bark were bright and burning, and could have been seen and should have been seen by the Alabama, and a course adopted to avoid her.

I am not satisfied that the Alabama ought not to *have kept her course*, and suffered the responsibility and duty of avoiding her to rest on the *Game Cock*, where it belonged, and if the vessels approached so nearly as to suggest peril in so keeping her course, then that she should not have earlier slowed,
321 and, if necessary, have stopped and backed *in due season.* The fault of the Game Cock is equally *if not still more clear.* She was manifestly and *grossly in fault* in not carrying the *lights required by law to indicate* that she had a vessel tow. *Had she carried such lights and so furnished to the Alabama that information, it is in a high degree probably that no collision would have occcurred.* Notwithstanding the faults in the navigation of the Alabama, she did succeed in passing the Game Cock, and had she been apprised by *the lights on the latter that the Ninfa was in her tow, she would doubtless have continued to move eastwardly* on her starboard helm and have passed both tug and tow in safety. More than this, the tug acted under this alternative. The Game Cock and the Alabama were approaching end on, or very nearly

so, in which case the tug should herself have *ported* and gone to the eastward of the Alabama, in which case there would have been no collision. Or, in the other alternative, the two steam vessels were upon courses crossing each other so as to involve risk of collision, and the Game Cock had the Alabama, (according to the witnesses from both the Ninfa and the Game Cock) on her own starboard bow, and by the rules of *navigation was bound to avoid the Alabama*, while the latter should have kept her course. Crossing the bow of the Alabama in this state of
322 things, and especially doing so without previous notice of an intention to do so, *was a plain fault.* She cannot say that her attempt to do so, in exercise of a right to choose her own mode of avoiding the Alabama, was thwarted by *the movement of the Alabama*, since the latter, by starboarding, did just what the Game Cock expected her to do, and what, after the movement was begun, she signalled as her wish that she should do, so that whether the steamers be regarded as approaching nearly end on or as crossing with the Alabama on the Game Cock's starboard bow, the fault in *the navigation of the Game Cock is palpable.*

It does not save the Game Cock from condemnation that the Alabama *starboarded also.* This was done after she saw that the Game Cock was crossing and *persisted in crossing to the westward*, and if the movements were concurred in by each, it only makes a case of concurring fault, producing the collision which ensued. I concur with the district judge in his opinion in this case, (1 Benedict's Ad. Rep., 476,) that the collision was caused by the *fault of both vessels*, and in his reasons other than those above repeated.

I find nothing in the evidence as to the amount of damages, or in relation of the duty of the libellants to do more than was done for the purpose of raising the bark which calls for any modification of
323 the decree. But in regard to the liability of the Alabama for more than one-half the damages, this court has already decided that her liability cannot be increased by the circumstances in which

she had no agency; that the Game Cock is not of value sufficient to pay the other half. (11 Bl., C. C. R., 290. The City of Hartford and the Mist, decided in June, 1873; and see also the Atlas, 4 Benedict, 27, and 10 Blatchford, 459.) It is urged that such a holding involves a liability on the part of the Ninfa herself, which would make her liable for the fault of the tug, in such sense that if the Alabama had sustained the greater damage, the Ninfa must contribute thereto. Not at all; the holding merely imports that her relations to the tug which she had employed were such that she can recover no more than the tug (if injured to the same extent) could recover, or than the tug, if she had paid to the owners of the Ninfa her full value in discharge of their own plain liability, could in turn recover from the Alabama towards indemnity.

As between the Ninfa and the tug, the latter, under her contract for safe towage, or towage with proper care, prudence, and skill, was liable for the whole loss; so that whether this proceeding against the Alabama is prosecuted by the one or the other, ought not to affect the Alabama. It is very true that by the rules of the common law one who
324 is injured by the concurring fault of two or more may, it is held, recover full indemnity from either or all. But the admiralty do not inevitably follow the common law rules, where as between two, each is in fault, neither can recover, but in admiralty each contributes. On the one hand, it is not inequitable to say that the contribution of one ought not to be increased by circumstances which she had no agency in producing, and on the other it is not inequitable to say that the tow (as in this case) voluntarily subjected herself to the hazards of the misconduct of the tug, and therefore to the contingency that such misconduct might, in case of loss, give her no claim beyond contribution from another vessel. Had the tug discharged her own liability to the Ninfa upon her contract, as she ought, the tug could recover no more. The Ninfa should not be permitted to charge the Alabama more, because the Ninfa may have trusted irresponsible parties.

I am aware that the question is one of great interest and importance. There are, I think, some cases in the Supreme Court in which it must necessarily be soon considered; and we shall then be instructed whether to follow the views of Dr. Lushington in the case of the Milan, (1 Lush., 404,) and applied in the cases before cited, or to act upon a different rule in the admiralty courts of this country. For the present, I must say that the opinion in the case of the City of Hartford and the Mist must be taken as the opinion in this case upon the point now under consideration.

The learned judge says the "Alabama had no proper lookout. She ought to have seen the barque in tow in season to avoid her."

As to the "lookout," I take direct issue with the learned judge. And as to the statement that "she ought to have seen the barque in tow in season to avoid her," he takes issue with himself. [Read his opinion at fol. 321,] she *did see* the barque *in time* to avoid her, as the evidence proves. She would have avoided her, as the judge himself suggests, but for the fault in having no lights to indicate a tow, and her furled sails making her look like a vessel at anchor, which the Alabama would have easily cleared.

SHE HAD A PROPER LOOKOUT.

John Pullin, of the Alabama: "I was quartermaster; *I was on the lookout*, standing on the starboard side of the pilot-house, *on the hurricane deck;* I had been there twenty minutes;" * * * "I saw one man standing on the forecastle deck when I was on the lookout." * * * "There was a man on the forecastle; I saw him there." * * * "The pilot and chief engineer were up in the pilot-house at the time." * * * "The main deck, *with the forecastle*,

extends some 40 feet forward of the pilot-house. The pilot-house is in the *forward part* of the house on deck. I stood right along side the pilot-house." * * * "The chief mate stationed me *on the look-out.*" * * * "When I saw the tug I spoke to the pilot, and he said he had seen it." * * * "The tug was about half a mile off when I first saw her; she bore *about a point on our port bow.*" * * * "We were heading about south." * * * "From the time I went on watch up to the collision I was doing nothing; I was put on the lookout by the first officer, and I remained near the starboard side of the pilot-house all the time." (P. 50, fol. 89, 90, p. 51, fol. 90, 91.)

"The steamer had a red light on her port side, green light on her starboard, and a white light at the masthead. They were burning brightly—I put them up myself." (P. 50, fol. 89.)

Otis Pendleton, first officer of the Alabama: "I was on the Alabama at the time of the collision; I was first officer; it was my watch on deck." (P. 52, fol. 92.)

"There was a pilot on board, he was forward by the pilot-house, by the rail at the forward part of the pilot-house." (P. 52, fol. 92.)

"Steamer's lights were burning brightly at the time." (P. 52.)

"I saw *a watch on the forecastle at the time*, but I can't say who it was; *we always have a watch on the forecastle, besides the quartermaster on the hurricane deck.*" (P. 52, fol. 93.)

"I saw a man on the forecastle deck." (P. 52, fol. 93.) (See fol. 94, at end.)

Marsden: "Pullen did not help me put the helm to port; he was then *outside the pilot-house, on the look-out,*" (p. 56, fol. 99.)

Shafer, chief engineer:

"I went up on hurricane deck, by pilot-house; I saw there the pilot; he was walking backward and forward, athwart ship, in front of the pilot-house. I saw one of the quartermasters there also; he was outside of the pilot-house; saw the tug's lights; these lights were off on port bow of the steamer, * * * nearly two miles off," (p. 57, fol. 102.)

Peter Marsden, one of the quartermasters of the Alabama: "I had the wheel at the time; pilot stood at the forward part of the pilot-house, on the hurricane deck," (p. 54, fol. 96.)

The pilot, Martino, says: "I could see over half a circle. I should say that it (the position) was as good a one for observations as any aboard the ship," (p. 164, fol. 290.)

This disposes of the question as to "*lookout.*"

But criticism is made that, though the hurricane deck lookout is produced, the forecastle lookout is not, and that we rest by proving that he was there, but do not produce him. The reason is fully given, (page 173, fol. 312 to 315:)

John F. Patterson: I am 37 years of age; my present occupation is clerk for Marshall O. Roberts, and have been for two years. I have been in his employ for sixteen years.

1. Q. Have you had any experience as a seaman; and if so, what?

Ans. The only experience I have had is that of purser of a steamship for twelve years.

2. Q. State whether you have had opportunities in that way to learn the habits of sailors when they are discharged from their voyage.

Ans. I have.

3. Q. State whether you knew of any difficulties in finding them after they are discharged; and what are some of those difficulties?

Ans. The difficulties after the ship has arrived and discharged, and they have secured their pay, are, they generally scatter or disband, and, with very few exceptions, you seldom see the same men.

4. Q. As to their names, what would you say?

313

Ans. In many instances, the names given by them upon shipping are given so loosely that it is not their genuine name.

5. Q. After Mr. Roberts became aware of the fact that he might be held liable for a large amount in this suit, did he give you any directions, and in consequence of those directions did you do anything; and if so, what?

Ans. He told me that Judge Pierrepont would be in the case, and to report to him, which I did do. Mr. Roberts being present at the time, and he giving me directions to do, so far as possible, what Judge Pierrepont directed me to do, under Judge Pierrepont's directions I procured a list of the names of the crew of the Alabama at the time of the collision, from which list I took the names of those comprising what is called the deck department, and endeavored to find their whereabouts. I found two and also the fact of the death of the first officer. I found Pullin and Marsden. Of the others I could find no trace, either personally, nor could those that I directed so to do—that is, Captain Lamberger and the pilot and these two men—find any trace of them.

6. Q. State the extent of the efforts which you have made to find the deck department?

Ans. I have visited principal wharves where steamships come in, and have also had conversation with all officers and others employed on steamships, but could obtain no trace whatever of any of them. I saw Captain Lamberger, the pilot, and these two mentioned men, frequently during my own search, and they have met with no success in obtaining any clue.

314

7. Q. When did you receive these instructions from the counsel, and how long did you continue your search?

Ans. I think I received the instructions from the

counsel in the month of February or March, 1872, and I have, directly and indirectly, continued the search up to the present time.

8. Q. You stated that you discovered that the first officer, Mr. Pendleton, was dead. When did you find that he died, and from whom did you learn it?

Ans. I found, by visiting his late residence in Broome street, from his wife, that he died August 1st, 1868.

9. Q. You have spoken of the deck department. Why did you confine your investigations to the deck department?

Ans. Because I presumed those were the ones more specially interested, and whose duties it would be to be around or on deck during the time the ship would be under headway. There is no affinity between what are termed three departments on a steamship, so that I considered it useless to seek information from either of the other two departments. The three departments consist of what are termed the deck, engineer's, and steward's.

315 The object of your investigation under the direction of counsel was to find out who were on the watch, was it not?

Ans. It was.

11. Q. Were you able to find out who were on the forecastle, or who on the watch?

Ans. I was able to find out who were on the watch. The party on the forecastle I could not find.

12. Q. Were you able to find the persons themselves?

Ans. Those that were living I was; they are the persons I have named. I could find no others.

13. Q. Was there any list which would specifically tell who were on Mr. Pendleton's watch, which is called in the testimony the dog-watch, at the time of the collision?

Ans. There was not.

But the learned judge further says:

"I am not satisfied that the Alabama ought not to have kept her course and suffered the *responsibility* and *duty* of *avoiding her to rest on the* Game Cock, *where it belonged*," &c.

There is no doubt that the responsibility and duty did belong where the judge says it did.

The law above cited is clear upon that.

But never at the common law or in the Admiralty was it ever held that because a coach or a ship had a *legal right* to a particular course, she was *in fault* for varying from that course in a sudden emergency, to save disaster to property and human life.

Had the Alabama done what the judge suggested she had a right to do, it is certain that the tug and her crew would have gone to the bottom of the sea. A heavy-laden express wagon driving down Broadway at full lawful speed, and keeping to the right, meets a sailor coming up with his family in a chaise; the sailor, confused, pulls the wrong way, (as a sailor will be sure to do,) would it be *a fault* in the express wagon to hold up, turn to the left, and avoid the crush of the human load if he could? And if in the attempt to save the sailor from the disaster which his own stupid wrong had induced, the expressman knocks off the wheels of the sailor's vehicle, could the expressman be held liable for the damage? Would the learned judge say that the express having the *right* to that side of the street, *should have* kept on its course, and left the responsibility of getting out of the way to the sailor?

The judge says the "Game Cock was *manifestly* and *grossly* in fault in not carrying the lights required by law to indicate that she had a vessel in tow."

And he *proves* that but for that fault of the tug (the servant and sole motive power of the barque) "*no collision would have occurred.*"

Then, where is the *fault* of the Alabama?

There was *no* fault, as we proceed to prove.

The Ninfa had her captain, mate, officers, and crew all on board at the time of collision.

The captain says:

"We took the pilot on board November 14, 1865, outside of Sandy Hook. On the 15th we took the tug-boat Game Cock. *I made a bargain* for her to tow us to New York." * * * "We took the tug outside Sandy Hook; then furled our sails; *furled them close;* and they remained so.

"There was a wind from the *northwest*, or north-northwest—*a head wind for us*, and blowing *pretty fresh*. I saw the Alabama when the Game Cock blew her whistle; it was a double whistle. This was between 5 and 6 o'clock." * * *

"José Vidal was at our wheel. I ordered him to obey the pilot, and to keep the Ninfa *right in the track of the* Game Cock and to follow her chimney. When I *first* saw the Alabama she was about 21 degrees on our starboard bow. I stood on top of the cabin-house; * * had been there five minutes perhaps." (P. 44, fol. 79.)

NOTE.—He saw the Alabama when the Game Cock *blew her double whistle, on starboard bow.* Of course, she was *then* on starboard bow.

Every witness proves that the double whistle did not blow until the Game Cock had sheered and *actually passed* the Alabama's bow.

The *command* of the Ninfa remained with her captain; her own employed and sole motive power was the *steam-tug*. She moved by steam, under her captain's orders. She was a *steamboat*, with all the responsibilities of a steam craft, as all the cases hold.

The Keystone State, 22 Howard, 461.
The Pennsylvania, 3 Benedict, 215.
The Caldon, 1 Lushington, 158.
The Corsica, 9 Wall., 633.
The Columbia, 10 Wall., 246.

"She was manifestly and grossly in fault." She had *no lookout*, and no signal lights to indicate that

she was in tow. She demanded none and had none on her tug, and having none *anywhere*, and with her sails close-furled, she deceived the Alabama, who justly thought she lay at anchor, in which case the Alabama would have easily passed (as the testimony cited proves) between the barque and the tug without harm, but the concealed motion caused by her tug brought her direct upon the Alabama's bow, which the steamer was trying to avoid, and did avoid the tug.

The evidence is voluminous and it is evident that the learned Judge did not read the evidence about the "lookout" of the Alabama; he must have confounded it with the undisputed evidence that the *barque* had no lookout.

The Judge makes no reference to the law upon the subject. Even if there were *no* lookout and that fact did not contribute to the collision the steamer is not in fault in this respect.

1 Parsons on Ship. and Adm., 577, 578 and *cases cited.*

Bill *vs.* Smith, 39 Conn., 209.

Millen *vs.* Smith, 2 E. D. Smith, 462.

Lowndes on Collisions, p. 68, 69, and the *cases cited.*

The tug and barque were *seen* in abundant time to have avoided collision; it was not that all were not seen; it was, that the barque was seen with sails close furled *as at anchor* and no signal lights and no notice to indicate that she was moving in tow. This fault of the barque and tug and the unlawful course they took in crossing the Alabama's bow to get in shore to avoid the head wind, and to find easier towage caused the accident, and *this only;* and so the Judge evidently thinks.

There was no defect in the Alabama's lookout and no failure to see, and no contributory negligence for want of observation on the Alabama's part. If she had no lookout at all, and it appeared that the collision was caused by something quite outside of that neglect, she could not be held liable on that ground.

Common sense does not desert the Court in Admiralty any more than at the Common Law.

The law requires that a carriage driving down certain streets at night shall have side lights. A gentleman is driving without lights and a badly constructed scaffold of a building falls and kills the horses and the driver. Would it be a defense to a suit for damages that the carriage had no lights? It being clear that the want of lights did not contribute to the fall of the scaffold.

It is clearly proved that the barque had no lookout, no one pretends to have been a lookout on the barque. Not one of the officers or crew even saw the Alabama until the tug had crossed her bows and blown her double whistles.

The pilot of barque, saw her but he was not on lookout, he gave no proper attention having the erroneous notions of the law, that when the steamer was brought on his starboard, two whistles gave him the right of way.

The pilot says, (page 15, fol. 28.)

"I saw a red light, say three miles off—can't tell bearing—on starboard bow; she was above Narrows, near Robins' Reef light; nothing occurred till G. C. blew whistle twice; A. did not answer, so I heard; two whistles mean starboard the wheel; one whistle is port wheel; two whistles is to go to the left; the first one *that blows gets the right of way;* when G. C. blew the A. was about a point on starboard bow of N.; when G. C. blew we put our wheel starboard. I took the two whistles to mean we must starboard our wheel."

The law is not as the pilot supposed.

13 Stat. at Large, 6 Art., 13, 14.
The Corsica, 9 Wall., 630.
The Columbia, 10 Wall.
The Chesapeake, 5 Blatch., 411.
The Eastern States, 2 Curtis, 141.
The St. John, 7 Blatch., 220, 224.
The Johnson, 9 Wall., 146, 154–5.

The barque having no lookout did not see the steamer in time to do what she was bound to do. She did not hail and direct the tug not to cross the Alabama's bows; and when she saw, (after the whistles blew,) and the tug had passed, she did not cut or throw off her hawser and let the Alabama pass between, when there was plenty of room, but put her helm hard a starboard, and thus aided in throwing the barque more direct into the Alabama's course.

This was clear negligence, and a gross fault on the part of the barque, which contributed to the accident; but had she had a proper lookout she would have seen the Alabama at an earlier time, and avoided her, by porting or throwing off or cutting her hawser, or both.

For this the barque is liable as a contributor to the accident.

The Ottawa, 3 Wall., 268.
1 Parsons Mar. Law., 191, and cases in note 4.
The Johnson, 9 Wall., 147.
The St. John, 7 Blatch., 220.

Remember that the barque was under steam.

The Keystone State, 22 How., 461.
The Penna., 3 Ben., 215.
The Caldon, 1 Lush., 158.
The Corsica, 9 Wall., 633.
The Columbia, 10 Wall., 246.

There was no defect in the Alabama's lookout and no failure to see, and no contributory negligence for want of observation on the Alabama's part. If she had no lookout at all, and it appeared that the collision was caused by something quite outside of that neglect, she could not be held liable on that ground.

Common sense does not desert the Court in Admiralty any more than at the Common Law.

The law requires that a carriage driving down certain streets at night shall have side lights. A gentleman is driving without lights and a badly constructed scaffold of a building falls and kills the horses and the driver. Would it be a defense to a suit for damages that the carriage had no lights? It being clear that the want of lights did not contribute to the fall of the scaffold.

It is clearly proved that the barque had no lookout, no one pretends to have been a lookout on the barque. Not one of the officers or crew even saw the Alabama until the tug had crossed her bows and blown her double whistles.

The pilot of barque, saw her but he was not on lookout, he gave no proper attention having the erroneous notions of the law, that when the steamer was brought on his starboard, two whistles gave him the right of way.

The pilot says, (page 15, fol. 28.)

"I saw a red light, say three miles off—can't tell bearing—on starboard bow; she was above Narrows, near Robins' Reef light; nothing occurred till G. C. blew whistle twice; A. did not answer, so I heard; two whistles mean starboard the wheel; one whistle is port wheel; two whistles is to go to the left; the first one *that blows gets the right of way;* when G. C. blew the A. was about a point on starboard bow of N.; when G. C. blew we put our wheel starboard. I took the two whistles to mean we must starboard our wheel."

The law is not as the pilot supposed.

13 Stat. at Large, 6 Art., 13, 14.
The Corsica, 9 Wall., 630.
The Columbia, 10 Wall.
The Chesapeake, 5 Blatch., 411.
The Eastern States, 2 Curtis, 141.
The St. John, 7 Blatch., 220, 224.
The Johnson, 9 Wall., 146, 154–5.

The barque having no lookout did not see the steamer in time to do what she was bound to do. She did not hail and direct the tug not to cross the Alabama's bows; and when she saw, (after the whistles blew,) and the tug had passed, she did not cut or throw off her hawser and let the Alabama pass between, when there was plenty of room, but put her helm hard a starboard, and thus aided in throwing the barque more direct into the Alabama's course.

This was clear negligence, and a gross fault on the part of the barque, which contributed to the accident; but had she had a proper lookout she would have seen the Alabama at an earlier time, and avoided her, by porting or throwing off or cutting her hawser, or both.

For this the barque is liable as a contributor to the accident.

The Ottawa, 3 Wall., 268.
1 Parsons Mar. Law., 191, and cases in note 4.
The Johnson, 9 Wall., 147.
The St. John, 7 Blatch., 220.

Remember that the barque was under steam.

The Keystone State, 22 How., 461.
The Penna., 3 Ben., 215.
The Caldon, 1 Lush., 158.
The Corsica, 9 Wall., 633.
The Columbia, 10 Wall., 246.

As to the faults of the barque.

She is chargeable in this action with all the faults committed in the navigation of the tug, and also with those committed in her own navigation, which caused or tended to cause the collision. She is chargeable with the faults of the tug under the laws of master and servant.

1. The work of the tug in towing the bark was a service for and on her behalf, and the tug and owners were responsible to the barque for all consequenees arising from negligence in the discharge of that service. If such negligence consisted in carelessly and improperly towing the barque across the bows of the steamer, whereby she became injured, she cannot claim exemption from the consequences of such fault of her servant, merely because her own propelling power was in her servant. She could not so deputize the management and control of her movements, without taking the responsibility upon herself, arising from the bad navigation of her agent, the tug, especially in so far as her own safety might be concerned.

The Creole, 2 Wall., jr., 485.
1 Pars. Mar. Law, 208, and note.
The Steam-tug Sampson, 3 Wall., jr., 14.
Maclechlan on Merchant Shipping, 263–265.

The barque had all her officers and crew on board, one of her own men at the wheel, was guided by her own pilot; she furled her sails and hired a steam-tug to propel her, which was bound to obey her. She voluntarily adopted this mode of propulsion, and she

is in the same responsibility as though she had put the tug's engine in her hold, so far as other vessels are concerned.

The China, 7 Wall., 53–70.
The Creole, 2 Wall., jr., 485, 512.
The Hope, 2 W. Rob., 8.
1 Pars. Mar. Law, 208.

The barque is chargeable for co-operating with the tug in the wrongful attempt to cross the steamer's bow. There is no dispute that she did co-operate.

It is averred in the libel, (p. 1,) and testified by her pilot (p. 15 and 16,) that when the tug blew her whistle the barque's wheel was put hard to starboard as quickly as possibly, and so the master also says, (p. 46.)

The pilot in charge of the barque knew, as he was bound to know, that to cross the Alabama's bow and pass her to the starboard was a *gross violation* of the rules of navigation, and he should have stopped it or tried to stop it; if he could not, he should have parted and cut his hawser and cleared the barque from the tug.

The ignorance of the pilot about the law is no excuse. He seemed to think that because he sounded two whistles that he had acquired the right of way, and the right of the barque to cross the steamer's bows in violation of the rules of navigation, and that the steamer was obliged to keep out of her way.

The pilot says this at (p. 15:)

"*The tug had no such right.*"

The St. John, 7 Blatch., 221–224.
The Johnson, 9 Wall., 146–155.

The bark had no signal lights to indicate that she was in tow and not at anchor; and the tug had none.

Simpson as Hand
6 Wharton 311
Vanderplank as Miller

The barque was bound to see that when she furled her sails, and adopted the tug as her motive power, that the tug had the signal lights required by law to indicate a tow.

THE BARQUE WAS CLEARLY LIABLE AS WELL AT THE TUG.

Suppose the Ninfa had been a large ship, richly freighted from the Orient, instead of a little Spanish pine barque, and the Alabama had been a small steamboat running on the Shrewsbury river, and the collision had occurred *precisely* as it did occur, and under the same exact conditions, and the steamboat had gone down, could any honest admiralty court fail to hold the ship and the tug both liable for the steamboat?

The tug was liable to the Ninfa, in the absence of reasonable care, proper diligence, and skill.

Story on Bailments, 8th ed., sec. 496.
Caton *vs.* Ranney, 13 Wend., 387.
Wells *vs.* Steam Nav. Com., 2 Comst., 204; 54 Barb., 560.
Steamer New Phila., 1 Black., 62.
The Cayuga, 16 Wall., 177.

Both were liable to the Alabama for their violation of the rules of navigation.

FOURTH.

The Alabama was not in fault.

Her officers and her pilot were men of skill and great experience. All her lights were brightly burning, and all her men at their post. The tug was seen at least two miles off. The Alabama was going at moderate speed, keeping to the right and near the

west shore as the law required. They were approaching in nearly opposite directions; the tug was seen off the port bow of the Alabama, and the tug first saw the red (port) lights of the steamer when two miles off. Had each kept their course they would have passed port to port. As they neared the Alabama ported a little to give the tug a wider berth, but the tug, having the wind ahead, and wishing to hug the west shore for smoother water, undertook to cross over the Alabama's bows, contrary to the rules of navigation, and in the unlawful attempt she cleared herself, but pulled the tow (whose character was indicated by no lights) across the line of the Alabama, and thus by gross negligence and unlawful action caused the accident, which the Alabama did all in her power to avoid.

The Evidence on this Point.

The testimony of John Martino, a pilot of great skill and experience, and the pilot of the Alabama at the time of the accident. (P. 163 to 172.)

I am fifty-eight years of age.

Q. 1. What is your present occupation, and how long have you been engaged in it?

A. Pilot, in the harbor of New York; and have been engaged in it since the year 1837.

Q. 2. State how familiar you are with this harbor, and the harbor regulations in relation to pilots' duties?

A. I am acquainted with all the regulations and with its shoals, courses and distances, and have been since 1832.

Q. 3. Do you remember the collision between the bark *Ninfa* and the steamer *Alabama?*

A. Yes, sir; I was pilot of the *Alabama.*

Q. 4. Where were you standing at the time of the collision?

A. Close by the ship's wheel—in the wheel-house.

Q. 5. How far was that from the bow of the ship, and how far was it elevated above the ship's deck?

A. It was from thirty-five to forty feet from the stem and about seven feet above the ship's deck—that is, the floor of the wheel-house.

Q. 6. State as to that position in advantage for seeing ahead.

A. I could see from one beam to another—that is, I could see over half a circle.

Q. 7. As to the position being a good one for observation, what would you say?

A. I should say that it was as good a one as any aboard the ship.

Q. 8. When you first saw the tug which towed the *Ninfa*, what was the distance?

A. I should judge about two miles.

Q. 9. Where was the *Alabama* when you first saw the tug?

A. Somewhere between Vanderbilt's Landing and Clifton, on the Staten Island shore, and about a quarter of a mile from shore.

Q. 10. Where were you piloting the steamer?

A. To Sandy Hook, from New York.

Q. 11. On what shore were you keeping?

A. The Staten Island shore.

Q. 12. Do you know whether you were bound to keep that shore?

(Objected to.)

A. Yes, sir; by the rules of navigation.

Q. 13. When you saw the tug's lights, as you have stated, what lights did you see, and over which of your bows did you see them?

A. I saw all her lights, and saw them on our port bow—that is, the red, green and the white light on the flag-staff.

Q. 14. In what direction were you then going, and in what direction was the tug then coming?

A. We were going south, and she was coming north.

Q. 15. If each had continued the same course as at the time mentioned, how would you have passed each other?

A. Each would have passed to the starboard.

Q. 16. Would that be port side to port side, each passing to the right of the other?

A. Yes, sir.

Q. 17. Did you see any change in the tug's course; and if so, when did she change her course?

A. I saw a change in her course, but not until she got close up to us.

Q. 18. Until she got close up to you and changed her course, did the *Alabama* change her course?

A. No, sir.

Q. 19. How near was the tug to you when she changed her course, and what was the change she made; describe it?

A. She was about two hundred feet off when she changed her course; I discovered the Sandy Hook lights, and the Highland light begin to draw on her; that is, to go across my bows; what I mean is, I saw the lights of the tug begin to cross the line of the light of the light-house, and by that I judge she was crossing our bows.

Q. 20. Please state whether she was crossing your bow?

A. Yes, sir; she was.

Q. 21. On discovering that she was crossing your bow, what did you do?

A. Told the quartermaster to look out for his starboard wheel.

Q. 22. What did that mean?

A. It meant not to get a sheer to the starboard.

Q. 23. What next occurred?

A. As soon as I found we were going to clear the tug, I told the quartermaster to steady her on her course.

Q. 24. Did you clear the tug, how far did you clear her, on which side did you clear her?

A. We cleared her, I should judge, about twenty feet on the starboard side.

Q. 25. What occurred further?

A. The tug blowed two whistles, which meant for us to starboard.

Q. 26. What did you do?

A. Close by the ship's wheel—in the wheel-house.

Q. 5. How far was that from the bow of the ship, and how far was it elevated above the ship's deck?

A. It was from thirty-five to forty feet from the stem and about seven feet above the ship's deck—that is, the floor of the wheel-house.

Q. 6. State as to that position in advantage for seeing ahead.

A. I could see from one beam to another—that is, I could see over half a circle.

Q. 7. As to the position being a good one for observation, what would you say?

A. I should say that it was as good a one as any aboard the ship.

Q. 8. When you first saw the tug which towed the *Ninfa*, what was the distance?

A. I should judge about two miles.

Q. 9. Where was the *Alabama* when you first saw the tug?

A. Somewhere between Vanderbilt's Landing and Clifton, on the Staten Island shore, and about a quarter of a mile from shore.

Q. 10. Where were you piloting the steamer?

A. To Sandy Hook, from New York.

Q. 11. On what shore were you keeping?

A. The Staten Island shore.

Q. 12. Do you know whether you were bound to keep that shore?

(Objected to.)

A. Yes, sir; by the rules of navigation.

Q. 13. When you saw the tug's lights, as you have stated, what lights did you see, and over which of your bows did you see them?

A. I saw all her lights, and saw them on our port bow—that is, the red, green and the white light on the flag-staff.

Q. 14. In what direction were you then going, and in what direction was the tug then coming?

A. We were going south, and she was coming north.

Q. 15. If each had continued the same course as at the time mentioned, how would you have passed each other?

A. Each would have passed to the starboard.

Q. 16. Would that be port side to port side, each passing to the right of the other?

A. Yes, sir.

Q. 17. Did you see any change in the tug's course; and if so, when did she change her course?

A. I saw a change in her course, but not until she got close up to us.

Q. 18. Until she got close up to you and changed her course, did the *Alabama* change her course?

A. No, sir.

Q. 19. How near was the tug to you when she changed her course, and what was the change she made; describe it?

A. She was about two hundred feet off when she changed her course; I discovered the Sandy Hook lights, and the Highland light begin to draw on her; that is, to go across my bows; what I mean is, I saw the lights of the tug begin to cross the line of the light of the light-house, and by that I judge she was crossing our bows.

Q. 20. Please state whether she was crossing your bow?

A. Yes, sir; she was.

Q. 21. On discovering that she was crossing your bow, what did you do?

A. Told the quartermaster to look out for his starboard wheel.

Q. 22. What did that mean?

A. It meant not to get a sheer to the starboard.

Q. 23. What next occurred?

A. As soon as I found we were going to clear the tug, I told the quartermaster to steady her on her course.

Q. 24. Did you clear the tug, how far did you clear her, on which side did you clear her?

A. We cleared her, I should judge, about twenty feet on the starboard side.

Q. 25. What occurred further?

A. The tug blowed two whistles, which meant for us to starboard.

Q. 26. What did you do?

A. I did not give any particular orders; I said to the quartermaster, that is, to starboard; he hove the wheel to the starboard; I saw him do it.

Q. 27. How quick did he do it?

A. As quick as possible.

Q. 28. Did you hear anything further from the tug at this time?

A. Yes, sir; he sung out after he blew his whistle, "Look out, or you will be into that tow astern of us."

Q. 29. Until the tug thus sung out, did you know that he had a tow?

A. No, sir.

Q. 30. Had he any signal lights indicating that he had a tow?

(Objected to.)

A. I did not see any.

Q. 31. If there had been such, could you have seen them?

A. If they had been in their proper place I should.

Q. 32. What next happened after throwing the wheel to starboard, and on receiving this notice about the tow?

A. I told the engineer to slow, to stop and back her.

Q. 33. Was the order obeyed; and if so, how quickly?

A. It was; just as soon as they could pull the bells.

Q. 34. State whether it could have been done more quickly?

A. No, sir; it could not.

Q. 35. State whether the steamer was heavy laden, and what was the rate of her motion?

A. She was very heavy laden, and her motion was from five and one-half to six knots.

Q. 36. As an experienced pilot, state whether after you had notice of the tow it was possible to have stopped the *Alabama* any sooner?

A. No, sir; it was not.

Q. 37. State whether as an experienced pilot, after

the tug crossed your bow in the way you have described, you could have avoided striking his tow by an exertion?

A. No, sir; if we had stopped her instantly where she was, we could not have avoided the collision.

Q. 38. Why could you not have avoided it?

A. Because of the angle—they were coming together.

Q. 39. How were they crossing, at what kind of angle?

A. She was all of two points on our port bow.

Q. 40. Then, if you were going south, and she was going northwest, would that make about the angle?

A. Yes, sir; about that.

Q. 41. Where did you strike her?

A. On her starboard bow.

Q. 42. State how your stem passed in relation to her forestay?

A. Passed under her forestay, between that and the foremast.

Q. 43. Did that have any effect on her sinking?

A. It held her up.

Q. 44. As soon as the collision occured, what did you do?

A. The mate on the forecastle sung out she was sinking, and I told the engineer to stop backing; I sung out to the mate to see to get all the crew of the bark aboard the steamer.

Q. 45. Had the bark any lights; and if so, what lights?

A. I did not see any.

Q. 46. If she had had lights, red, green, and white, would you have seen them?

A. I think I should, if they had been in their proper place.

Q. 47. Did you see any green or red light after the collision, or at the time or before the collision on the *Ninfa?*

A. None, sir.

Q. 48. Up to the time the tug began to cross your bow, state whether the *Alabama* had changed her course from the time you first saw the tug.

A. No, sir, she had not.

Q. 49. If she had kept the same course as when you first saw her, and you had kept the course which you did keep, could there have been a collision?

[Objected to, that he had already testified that he did not keep his course.]

A. No, sir.

Q. 50. What caused you to put your wheel starboard, and how near were you to the tug before you put your wheel to starboard and changed your course?

A. I put the wheel to starboard a little to clear the tug, seeing she intended to cross my bow; we could not have been then more than one hundred feet apart.

Q. 51. As she crossed your bow could you see all her lights; and if not, what lights could you see, if any?

A. I could see her white light on the flag-pole—could not see any others, because she was right close to us.

Q. 52. Why did being close to you affect the seeing of any of her lights?

A. It was hid by our bow, that is from me, where I stood.

Q. 53. Before she crossed your bow, could you see all the tug's lights at any time?

A. Yes, sir.

Q. 54. When you first saw her, could you see all her lights?

A. Yes, sir.

Q. 55. As you neared her, could you still see all her lights?

A. Yes, sir.

Q. 56. When did she first hide any of her lights?

(Objected to, that the witness has not testified that she hid any.)

A. She began to hide her red light just before she crossed our bow, or when she was in the act of crossing our bow.

Q. 57. Which light is the red light?

A. Port.

Q. 58. Being very familiar with the harbor, state whether, just before the tug began to cross your bow, you could safely have been further to the right or nearer to the shore?

A. We were unusually close that night; we did not pass the fort further than one hundred yards.

Q. 59. How far from the fort did the collision occur?

A. About half way between the fort and the light; not more than three hundred yards below the fort.

Q. 60. State whether there was any difficulty in the channel, the state of the tide, shoals, rocks or other causes, to prevent the tug from having passed you with her tow in safety, by keeping to her right?

A. None, sir.

Q. 61. Was there any man-of-war shoal, or other shoal, to prevent the tug, with her tow, passing you in safety?

A. None at all, sir; she was a mile and a half above it.

Q. 62. What was the condition of the tide at the time of the collision?

A. It was within an hour of high water.

Q. 63. What effect had that upon the tug and her tow, favorable or unfavorable?

A. Favorable—it was flood tide.

Re-direct:

Q. 127. At the time that the collision occurred were there other people on the Alabama's deck besides those at the wheel?

A. Yes, sir; I can't state how many—there were several.

John Martino (page 15,) pilot of A. at the time; pilot 28 years; was on port side of pilot house at starting from New York; was in and out and in front of pilot house; window down; very dark night; partly cloudy; could see ship's light about three miles; flood tide; favorable to tug; we were heading S. ½ W. when first saw tug; were then little above Clifton, about quarter mile from shore; tug's light was two miles or more off when first saw it; it

bore S. ½ E., half point a little more on port bow; saw the green, red, and white light above; on seeing that light ordered him to look out for his port wheel, to pass to right; then saw tug trying to cross our bow; discovered that by lights on S. H. and Highland; she was eastward of those lights, and they were half point to eastward of A.'s course, and I saw the tug draw across the lights to go to westward of us; I then ordered the man to look out for starboard helm, to keep helm starboard; he kept it starboard till I discovered tug would go clear of us, and then I told him to steady; those orders were obeyed; next came two whistles from tug, then not more than sixty feet from us; then I saw green and white lights of tug; when blew whistles was crossing our line; could see smoke stack over our bow; heard two blasts; then told quartermaster to starboard his helm; order obeyed; by time of collision helm hard a-starboard; when whistles blown no bells then rung; then hail from tug, we would be on to that vessel; then slowed, stopped and backed; struck a minute after hail; saw no lights on barge; saw tug's three lights, and then she hid her red light when she crossed our bow; did not know till she hailed that the vessel was in tow; we struck about her cat-heads; when I heard whistles G. C. was heading on land; we were then parallel with land; had not then changed our course to W. of S. at that time we did not swing around on port helm towards shore; we did not change by porting more than quarter of point; we kept to right; that is usual course going to sea; we were making for Sandy Hook lights, which were quarter to half point on our port bow.

The Master's diagram does not show positions correctly. It places the G. C. and the N. too far to westward of A., and A. too far to eastward. The A was further to west. We went to within less than 200 yards of Fort Tompkins water-battery. The dotted line in Master's diagram does not represent A.'s course correctly. We did not swing round on a port helm; if we swung any it was on a starboard helm; when whistles blew, were heading due S.—changed not more than ¼ of a point by starboarding,

from whistles to collision. The Master's diagram does not lay down course of G. C. and N. correctly with reference to shore; they were heading towards shore; the wreck is there yet. It is half way between Fort and Bluff light—200 yards from shore. I saw nothing to hinder G. C. from going to eastward of us.

Examined by G. C.: Took S. course, half mile to N. of Fort Tompkins light; at Robin's Reef took S. ½ W.; had been on that 15 minutes when saw G. C.'s lights; kept that course till changed to S.; first saw G. C.'s lights 3 miles off; changed to S. on account of land; when first saw G. C.'s light it was half point on port bow; after we changed to S. saw her drawing to W.; then I starboarded when I discovered she was drawing to W.; I starboarded to let her go to W.; I gave no signal; there are in some regulations printed, in pilot-house; don't know whether A. had them; saw her three lights but a short time after she began to draw to W.; after I thought I had got her enough to W. I straightened on course—this was before whistles blew; I straightened up when I thought G. C. had room to go to our starboard; the whistles came right after I straightened.

Examined by Libellant: Changed from S. ½ W. to S.—due south; kept on S. ½ W. 15 minutes; kept on S. 10 minutes; was then going parallel with shore; no change then till G. C. blew whistles, and we starboarded our helm; answered her whistle by starboarding to go outside; after clearing tug she blew, and we then starboarded; five minutes after I told him to mind his port helm I told him to starboard; the tug was not more than 60 feet from our bow when she passed us; the G. C. was just passing our starboard bow when I heard whistle; she was then just abreast of our stem; when she blew I starboarded; her stem was 30 feet from our stem when she passed; she was then heading N. N. W.; it was not more than three to five minutes before G. C. blew that I meant to let G. C. pass to westward;

I expected tug to pass us 50 to 100 feet off; I had charge of A; when I made up my mind to let G. C. go to W. of us, I could not make it 100 yards as well as 100 feet; have been pilot ever since collisirn.

Examined by A.: After I steadied on S. course, the G. C. could not pass unless I had starboarded; when G. C. whistled she was safe; after whistling she hailed; the A. had a white light at mast-head; green on starboard and red on port; they were burning in good order.

Examined by Libellant: Saw only three vessels going down; going slow; drew sixteen feet; one hour and twenty minutes from Warren Street to Bluff; after leaving Clifton our rate was six knots; she was very deep; wheels deep; heavy loaded.

Joseph Limeburner, (p. 158,) being duly sworn for the appellant, says:

Q. 1. What is your occupation, and what was it at the time of the collision mentioned in this case, and how long have you followed the seas?

A. I was captain of the *Alabama*, and have followed the sea forty years, and have been master of a vessel over twenty years.

Q. 2. State your experience in the management of steamers at sea and in harbors?

A. I have had experience in the management of steamers for seven or eight years.

Q. 3. If a barque like the *Ninfa*, having no motion of its own, were in tow by a steam-tug, and the tug were going due north, or in any other direction, in what direction would the vessel in tow move?

A. In the same direction as the boat towing her.

Q. 4. Look at diagram No. 1, and say whether, if the courses of A, J, and N should continue as here indicated, collision could take place.

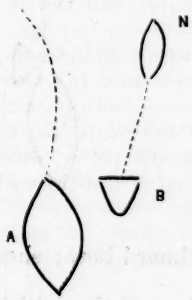
No. 1.

(Objected to.)

A. Yes, sir.

Q. 5. If the course of the tug and barque continued the same, and the *Alabama* took the course as indicated in diagram No. 2, and cleared the tug, state whether, if the *Alabama* kept the course, she could have struck the *Ninfa?*

No. 2.



(Objected to.)

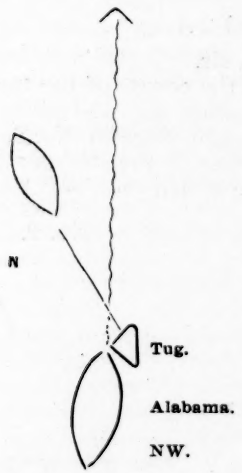
A. No, sir; she could not.

Q. 6. If the *Alabama* kept on the course until she came close to the tug, and then put her wheel hard a-starboard and cleared the tug, state whether she could have struck the *Ninfa*, if the course of the tug remained unchanged and the course of the *Alabama* continued the same after the wheel was put a-starboard?

A. No, sir; it would be impossible.

Q. 7. If the tug changed her course, and crossed the bow of the *Alabama*, as represented in diagram No. 3, and while the tug was crossing, the wheel of the *Alabama* was put a-starboard, clearing the tug, on which bow must she strike the *Ninfa*, if at all?

No. 3.



A. On the starboard bow; she could not strike on the other bow.

Q. 8. At the time of the collision, state the condition of the *Alabama*, touching the question as to the lading?

A. She was full cargo, heavy laden, and destined for New Orleans.

Q. 9. What was her size, and what would you say of her momentum as she was thus laden?

A. She was 1,051 tons, new measurement, and her momentum would be immense.

Q. 10. State whether, with her momentum, it was as difficult to stop her?

A. It was difficult to stop her; she was moving at least six miles per hour through the water.

Q. 11. Had the *Ninfa* lights? Had the tug signal lights, showing she had a tow?

A. I did not see any lights on the *Ninfa;* I looked at her, and think I should have seen the lights if there had been any.

Q. 12. When did you first look at the *Ninfa?*

A. When I came forward from the cabin, immediately after the collision.

Q. 13. How was she placed in relation to the *Alabama?*

A. Her forestay was down on the *Alabama's* bow, and she was held by the forestay on the *Alabama's* bow.

Q. 14. To have been in that position, in what direction must the *Alabama* have struck her?

A. At about right angles.

Q. 15. Where were you at the time of the collision, and what did you do?

A. I was in the cabin; I came on deck immediately, and went forward to ascertain what the damage was.

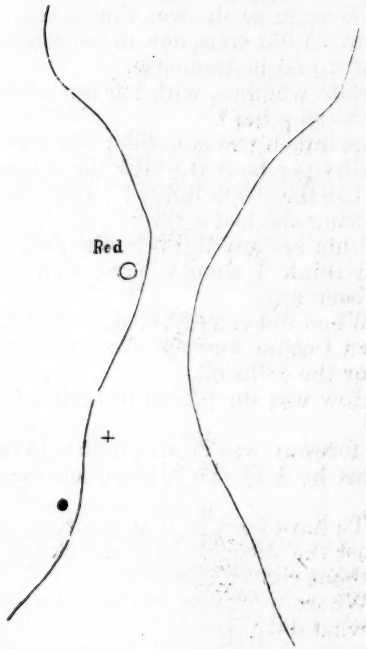
Q. 16. State how near the shore the collision took place, and how near the port the steamer was at the time?

A. We were from 200 to 250 yards from the shore; the *Alabama* must have been 400 or 500 yards below the fort on the Staten Island side.

Q. 17. State as to the correctness of the diagram No. 4, as representing the shore of the harbor, the position of the port, and the place of the collision.

No. 4.

Harbor of New York.



[Objected to.]

A. That is correct, the red being called the fort; the collision happened at the black cross (x); the black dot represents the light-house.

Q. 18. In going out of the port, at which side did you keep?

A. To the right.

Q. 19. And when the collision occurred, state how much nearer you could have been to the right, if any, with safety?

A. We were near enough to the shore; it was a dark night; it would not have been safe to be any nearer.

Q. 20. State as to the rapidity with which you hastened to the bow upon the collision.

A. As fast as I could walk.

Q. 21. If there had been the proper lights, of the proper color, on the *Ninfa* at that time, you could have seen them, could you not?

[Objected to.]

A. I could have seen the green light.

Q. 22. Did you see any green or any red light?

A. No, sir.

Q. 23. Who was the pilot in charge at that time?

A. Martino.

Q. 24. Do you know whether he is a pilot of any experience or not?

A. Yes, sir; he is.

Q. 25. Is he still a pilot?

A. Yes, sir.

The libel charges (p. 1) and the evidence proves (p. 165) that the Alabama was going South and the Ninfa North when they saw each other; that had they continued their course they would have passed port to port each to the right of the other as the laws of the harbor required, (p. 165.)

That the Alabama did not change her course until the tug came near, and then the Alabama ported a little to give the tug a wider birth, but when within a few hundred feet the tug suddenly changed her course and made for shore across the Alabama's bow. (P. 165, fol. 291.)

FIFTH.

The course of the vessels being certain when they were less than 20 minutes, and less than two miles apart. Let us see what was the position and course of each just before collision:

Mr Mills, engineer of the Game Cock, says: (p. 17, fol. 31.) "The tug was heading for Staten Island shore; would have run ashore if she had continued same direction."

Mr. Pullin, the quartermaster of Alabama, was *on the lookout*, (p. 50, fol. 88,) saw the tug at a distance; "she bore about a point on our port bow," (p. 50, 51, fols. 88,90;) as they approached the tug crossed the steamer's bow; Mr. Pullin called attention of Mr. Martino, the pilot, to the steam tug; "he said he had seen it."

Mr. Shafer went on deck, by the pilot house, the pilot called his attention to the steam tug's lights; "they were off on the port bow." (P. 57.)

"When close to the Alabama, the tug boat sheered and crossed our bows from port to starboard; she was very close to us at that time." (P. 57, fol. 102.)

Mr. Riley, one of the Game Cock, says: "*When heard whistles*, we were heading right in shore; would have *brought up* if continued on." (P. 17, fol. 31.)

Mr. Martino, the experienced pilot of the Alabama, says: (p. 165, fol. 291,) The Alabama did not change her course until the tug changed, when close to the Alabama, and shot across her bows, (p .165, fol. 291.) She slightly ported at first to give surer way for tug to pass to the right.

The engineer of the Alabama says:

"The next I observed was that when close to the Alabama, *the tug boat sheered and crossed our bows from port to starboard; she was very close to us at that time*; I heard no whistle from the tug boart *until after she had crossed our bows and had opened out on our starboard*

side; I then heard a whistle from her and a hail right away afterwards; I could not tell what was the hail; the pilot gave orders immediately after the hail to starboard the helm and to stop and back the engine; I saw the quartermaster, who was on the outside, jump into the pilot house, and he rung the bells to slow and stop, and then took hold of the wheel and helped to put it to starboard; I stepped immediately to the bell-pull and rung the bells to back; the bells were rung as quickly and the *same as if one man had rung them all.*" (P. 57, 88.)

Mr. Martino, the pilot of the Alabama says:

"Saw the green, red and white light above; on seeing that light, ordered him to look out for his port wheel, to pass to right; then saw tug trying to cross our bow; discovered that by lights on S. H. and Highland; she was eastward of those lights, and they were half point to eastward of A.'s course, and I saw the tug draw across the lights to go westward of us; I then ordered the man to look out for starbord helm, to keep helm starboard; he kept it starboard till I discovered tug would go clear of us, and then I told him to steady; those orders were obeyed; next came two whistles from tug, then not more than sixty feet from us; then I saw green and white lights of tug; when blew whistles was crossing our line; could see smokestack over our bow; heard two blasts; then told quartermaster to starboard his helm; order obeyed; by time of collision helm hard-a-starboard." (P. 18.)

Mr. Madsen, the other quartermaster, was at the wheel, "was heading south" (p. 54, fol. 96;) "the tug's lights bore about a point on our port bow," (p. 55, fol. 97.) "The first order was to port the helm," which was done (p. 54;) this was to pass to the right.

Mr. Martino, who has been a harbor-pilot for 35 years, was the pilot of the *Alabama;* stood on the

floor of the wheel-house—the best place for observation; saw the tug two miles off, and on the port side of the *Alabama;* was bound by law to keep to the right. (Printed Record., pp. 164, 165.)

The *Alabama* was wholly without fault. (Printed Rec., p. 160.) She was going down the bay at the moderate speed of six miles an hour (p. 161.) She was keeping to the right, near the Staten Island shore, as the law required. She was as near the shore as safety would allow (p. 162, 165.)

The steam tug was approaching on the *port* side of the *Alabama*, apparently about to pass at the right, as the law required, but suddenly sheered across the bow of the *Alabama*, and caused the collision (p. 165.) Every effort was made by the *Alabama* to avoid collision. The tug had no signal lights to give notice of the tow, as the law of the harbor required (p. 166.) It was not possible for the *Alabama* to do better than she did (p. 166.) Her lights were all brightly burning. It was the first officer's watch, and all the men were at their post (p. 50.)

The quartermaster was on the lookout (pp. 50, 56.)

A watch was on the forecastle (p. 52;) the pilot was also on the watch; the other quartermaster was at the wheel, receiving orders from the pilot (p. 54.)

Steamer was heading south, and close by the Staten Island shore.

The tug was seen on the port bow of the *Alabama*, and the steamer was ported a little to pass more to the right, but the tug sheered across the *Alabama's* bow (p. 17, 18.)

The *Alabama* did all in her power to prevent the collision (pp. 165, 166.)

Mr. Martino, the pilot of the *Alabama*, says:

"Very dark night; partly cloudy; could see ship's light about three miles; flood tide; favorable to tug; we heading S. ½ W. when first saw the tug; were then little above Clifton, about quarter mile from shore; tug's light was two miles or more off when first saw it; it bore S. ½ E., half point a little more on port bow," (pp. 17 and 18.)

"I should judge about two miles," (p. 164.)

"I saw all her lights, and saw them on our port bow."

"We were going south, and she was coming north," (p. 165.)

Mr. Pullen, quartermaster of the *Alabama*, says:

"I was quartermaster; I was on the lookout, standing on the starboard side of the pilot-house, which is on the hurricane-deck. I had been there twenty minutes; I saw the steam-tug some distance off, I cannot state exactly how far; she bore about a point on our port bow; I noticed her lights; I saw two lights; I saw a red light and a white light; the white light was higher up; the pilot was standing on the port side of the pilot-house, (p. 50.)

Mr. Madsen, also a quartermaster, says:

"I did not see the bark, but I saw the steam-tug; I saw her lights before the collision; I saw her lights sometime before the order to starboard the helm; I saw them before the order to port; the lights bore about a point on our port bow," (p. 55.)

"I had the wheel at the time; I took the wheel at five o'clock, at the time we left the dock; the pilot gave me the orders as to the course to steer; I followed his orders; he stood at the forward part of the pilot-house, on the hurricane-deck, very close to me—within hearing; I knew of the collision; *before*

that I was heading south about; south was my direction; but the steamer may have varied a quarter point either way," (p. 54.)

The pilot of the *Alabama* says:

"On seeing that light ordered him to look out for his port wheel; to pass to the right; then saw tug trying to cross our bow. * * I then ordered the man to look out for starboard helm, to keep helm starboard," (p. 18.)

Madsen, the man at the wheel, says:

"The first order of the pilot, before the collision, was to port the helm; I put the helm to port; the next order was to steady the wheel—that is, to bring the helm to midship, or a little more, so as to hold her on her course; I obeyed the order to steady; the next order was to put the helm hard to starboard; this order was given by the pilot, who gave the other orders also; I put the helm to starboard; I got it hard over before the collision; John Pullin, another quartermaster, helped me to put it over; the collision occurred not a second after we got the wheel over; I heard bells rung on our steamer; I heard one rung to slow; one to stop and two to back; they were rung one after the other, as quickly as possible, (p. 54.)

"The *Alabama* was heading south," (p. 56.)

Mr. White says:

"I heard a person halloo, but did not hear what; just as I heard the halloo the bell of the engine rung to slow, but before I had a chance to slow there was another bell on the top of that to unhook her; before I got her unhooked two bells were rung to back; by that time Mr. Smith was in the engine-room; Mr. Smith shipped the bar as soon as he came in, and the engine had made a half turn back when she fetched up; these bells were all answered as promptly as they could be; they all came top of each other; there was no loss, (pp. 53, 64.)

The engineer of the tug says:

"The tug was heading for Staten Island shore; towards shore; would have run ashore if it had continued same direction," (p. 17.)

Otis Pendleton:

"I was on the *Alabama* at the time of collision; I was first officer; it was my watch on deck," (p. 52;) "I saw a watch on the forecastle at the time, but I cannot say who he was; we always have a watch on the forecastle, besides the quartermaster on the hurricane deck." (P. 52.)

"I saw a man on the hurricane-deck; on a very clear night you can see a vessel's side lights three miles." (P. 52.)

John Pullin, Quartermaster:

"I was on the lookout (p. 50;) the chief mate stationed me on the lookout (p. 50;) I saw one man standing on the forecastle-deck when I was on the lookout; the steamer had a red light on her port side, green light on her starboard, and a white light at masthead; they were all burning brightly; I put them up myself." (P. 50.)

"There was a man on the forecastle; I saw him there; can't say his name; he is the only one of the crew I knew to be on deck at the time." (P. 50.)

George F. Smith:

"I was on board the *Alabama* as second assistant engineer at the time of the collision; I was in the engine-room; I had charge of the engine, and had charge of it ever since leaving port; the engine was in good order and condition, and was carrying, as near as I recollect, 15 or 16 pounds; she carries generally 17 pounds; she was not running at this time under full head of steam; I think we were carrying 15 or 16 pounds, as already stated.

The first order from the pilot-house was one bell; it was a little after six o'clock, and just before the collision; there was one bell rung first, followed by another, and then by two in quick succession; the first was to slow, the second to stop, and the other two to back; they all came together in quick succession; they were answered immediately; the engine was immediately slowed, stopped, and backed as quick as it could be done; we had got about half a turn back before the collision; Mr. White, the 3d assistant engineer, was in the engine-room with me; he slowed her, stopped her, and backed her; there was no delay in answering these orders—*not the least.*" (P. 67.)

The chief engineer of the *Alabama*, says:

"The next I observed was, that when close to the *Alabama*, the tug-boat sheered and crossed our bows from port to starboard; she was very close to us at that time; I heard no whistle from the tug-boat until after she had crossed our bows, and had opened out on our starboard side; I then heard a whistle from her, and a hail rightaway afterwards; I could not tell what was the hail; the pilot gave orders immediately after the hail to starboard the helm, and to stop and back the engine; I saw the quartermaster, who was on the outside, jump into the pilot-house, and he rung the bells to slow and stop, and then took hold of the wheel and helped to put it to starboard; I stepped immediately to the bell-pull, and rung the bells to back; the bells were rung as quickly and the same as if one man had rung them all." (P. 57.)

If the Alabama is not without fault it would seem impossible to be so at sea.

SIXTH.

The amount of damages allowed are beyond all reason. But if the Alabama is not liable we have no interest in that question, and it seems to us that

the mind which will consider this testimony and then hold the Alabama liable can sustain even these exorbitant damages.

The law is, that when a vessel, sunk by collision, can be raised and repaired, it must be done, and the owner cannot abandon her and claim for total loss. In such case the damages will be the cost of raising and repairing her, with the loss of her use for the time.

The Baltimore, 8 Wall., 377.
The Catherine, 17 How., 170.

The testimony shows that the collision occurred the 15th December, 1865; that on the 16th the libellant entered into an agreement with the Coast Wrecking Company to raise the barque for thirty per cent. exclusive of specie; that thereupon the company took possession and placed a light on the barque, which lay in seventy feet of water; that the Wrecking Company soon after underlet their contract to a Derrick Company, of which Captain McDonald was superintendent, who, after examining the barque, agreed to raise her $2,500 if he succeeded, but if not, then he was to have nothing; that he commenced work on the 23d of December, and having put chains under was about to hoist, when the libellant stated that there must be more chains, as she had 200 tons of ballast in her, (being 100 tons more than was supposed;) that McDonald tried to lift her with the chains he had on, and that after starting her the chain broke and she settled back; that the chain was repaired, but before he could take hold again the wind came on to blow, whereupon he took off his chains and left for New York, and he made no further efforts; and this was the only attempt that he

ever made to raise her. On the 29th December the proctors for the libellants wrote to the Coast Wrecking Company upon the subject.

There is no testimony going to show that the vessel could not have been raised; on the contrary, the contracts so made and the evidence show that she could.

McDonald testified, (p. 135;) that she could have been raised. He also says, (p. 139,) it was a mild winter, but little ice, and is sure he could have worked on her all winter, (pp. 140, 141.)

Brown, the superintendent of the Submarine Wrecking Company, says, (p. 133,) it was possible to have raised her in the winter months. And the weather record, which was produced, shows that the weather was mild. (Ex. H., p. 145.)

Perry testified, (p. 138,) that when the barque was first sunk, if light, two scows would have picked her up from the bottom; but that a vessel lying there all winter would be likely to fill with mud.

Jones testifies (p. 139) that the first effort to raise her after that of McDonald's, on the 23d December, was on the 25th of April following, more than four months after she sunk.

Goff, agent for libellant, says that all the libellant did was to cause the note to be written by his proctors, until after the Coast Wrecking Company had abandoned the work, which, according to Jones' testimony, was on the 11th May following. *Goff* further says (p. 130) that he made no agreement with with any one else to raise her.

The testimony shows that the contract with the Wrecking Company was hard for the wreckers, who, in case of failure, were to recover nothing. The making of that contract was not such reasonable measures to stop the progress of the damage as the law required the libellants to take. Moreover, it was gross negligence to allow the bark to lie from the time McDonald gave her up, on 24th December, without making serious efforts to raise her. During that time she became so filled with mud as to be more difficult to raise. The mere fact that the Wrecking Company violated their contract is no excuse as between the libellant and the steamer. The libellant probably had a right of action against the Wrecking Company for the negligence in the discharge of that duty. (2 *Pars. Mar. Law*, 631.) After the libellant resumed possession in May, an effort was made to procure another company to raise her on a salvage compensation dependent upon being successful, which was refused, but the company offered to raise her even then for a stipulated sum of $10,000, (p. 131.) According to the testimony, therefore, the vessel could have been raised with reasonable efforts, and was not totally lost by the collision.

The same argument applies to the loss of the doubloons—no reasonable and proper efforts were made to rescue and save them.

The same reasoning applies to the claims of the captain and the mate for their effects.

But should this Court consider the evidence sufficient to entitle the libellant to recover for a total loss, then it is submitted that the testimony did not warrant the district court in fixing her value at $50,000 currency.

The bark was three years old when she was so

lost; she had received some injuries before, and, according to the testimony, had depreciated ten per cent. on her original cost by general wear and tear. She was built in the Canary Islands, of *pine*, having a resinous quality, called "pino ateado," which is not as good as the Georgia pine, and is inferior to oak. She was a medium clipper of a sharp build, and was of the burden of about 374 tons, new American measurement, including her deck house of 69 tons, which should have been excluded. And the libellants undertook to fix her value by proving what it would cost per ton to build such a vessel, instead of proving what she was worth in market—what she would have sold for in New York, which was the place where the collision occurred, and where the damages are to be ascertained.

Savage *vs.* Corn Exchange Ins. Co., 36 N. Y., 655.

The testimony of the witnesses on the part of the libellant is substantially as follows:

The master of the bark testified that he had not made any particular effort to inform himself of the price of vessels in New York, but from inquiries the bark was worth from $60,000 to $80,000, (p. 43.)

Morales testified (p. 82,) that he had asked shipbuilder's the price of vessels, that he could scarcely give her value here in gold at that time, as he did not remember the rate, and was not here; that she would be worth here to-day (18th September, 1867,) $55,000 to $60,000.

Garcia says (p. 83,) she could not have been bought in the United States for less than $60,000 or $70,000, as he is convinced from inquiries made here; that

he formed his ideas from prices charged him when he wanted the rig of his vessel changed; that he did not know of the purchase or sale of vessels in New York, he had asked the price of several vessels here, and had fixed the value of the bark by comparing what was asked for them and their outfit, with her.

Peterson (pp. 87, 88,) saw the bark in Cardenas, Cuba; he only remembers to have seen her once, which was in July, 1864. He went aboard and went through her, and that she was worth $56,000, United States currency. He noticed that she was *hard wood*, he had been acquainted with vessels built of the hard woods of the tropics, and of warm climates for the past 18 years. and knew the reputation of others, and of the wood of those islands for ship-building purposes; that he was aboard, and merely examined her out of curiosity. He assumed certain dimensions, but whether they were correct or not was mere guess work. His estimate was upon the basis of her being built of *hard wood*, while she was in fact built of *pine*.

Camacho testified (p. 85,) under objection, that he would value such a vessel here at $110 per ton currency, but he did not know the value of such vessels in New York, in 1865.

Morrow (p. 60) says he is a native of the Canary Islands, that New York is his home, and he is a ship-master by profession; that he saw the bark in Havana twice, once in 1862, and once in November, 1865. The first time he went aboard and looked at her, he was lying alongside of her, went on deck and first part of the cabin, not all through her. The second time he went on her deck, not through her.

He does not state that he knows the value of vessels in New York, and yet from this slight knowledge of the bark, he thought she could not be built in New York at that time (November, 1865,) for less than $70,000 to $75,000 currency, which was his judgment of her value at that time.

Shepherd, after having read the deposition of the master, (p. 62,) describing the vessel in vague and general terms, and which is not correct in dimensions, estimates her value from $65,000 to $70,000 currency. But he never saw the vessel, and he bases his estimate of value upon the price per ton, which he says was, in December, 1865, $110.

Poillon, ship-builder, having heard the testimony of libellant read, says, (p. 61,) he knows the wood of which she was constructed; that he estimated her value at that time at $105 per ton, carpenters' measurement; that by carpenters' measurement she would be 609 tons, making her worth $63,945. He says she would depreciate in three years 8 to 10 per cent. That her custom-house new measurement would be about 550 tons. He also says that for a very sharp or extreme sharp vessel with no houses on deck, there is a difference of about one-half between carpenters' and the new custom-house measurement, the difference diminishing according as the vessel is full built. It is clear that this witness assumed her to be full built, as the difference he makes is only 59 tons, whereas she was not full built, but was of medium built clipper form, (p. 68.) This witness afterwards corrected his previous statement that he knew the *tea* wood, and says all he knows of it was from the captain's testimony. He never used the

wood in building or repairing vessels; had no personal knowledge of its being used here, but he presumes it to be a *species of oak*, (p. 132.)

On the subject of measurement, his rule is to ascertain the solid contents of the vessel, and dividing that by 95 brings it into tons (p. 132.) An extreme sharp vessel, of the yacht style, he would diminish one-half for new registered measurement; an ordinary model, about 25 per cent.; a "full" model, about 15; and a medium clipper, about 30 to 35 per cent. As the bark was a medium clipper, quite narrow below, and "long-legged," she would undoubtedly diminish fully 35 per cent. This would make Poillon's estimate of her new registered tonnage $385\frac{88}{100}$ tons, while Gaines' actual rule (p. 77) makes her $373\frac{95}{100}$ tons. The error of six feet in length of keel made by Poillon, will fully account for the difference. Besides, in his estimate, he takes her as an A1 or A1¼ vessel, (p. 133,) which she was not. She was the lowest rate (p. 75.)

Snow swears (p. 125) her value was from $133 to $155 per ton, although his firm, about that time, bought into the *Corsica*, a first-class ship, entirely new, for $80 per ton (p. 123.)

Wernberg testified to the same value as Snow. He supposed the *tea* wood to be "equal to *teak* wood." He says he had no personal knowledge of it any more than he had heard of teak wood. All he knew was that both were considered the best kind of wood to build a vessel; that teak is a very hard wood that will last a long time; that it grows in India, and is a good deal harder than mahogany—a wood he never heard of rotting; that he had the impression that *tea* and teak are similar woods, so far as durability

was concerned; that teak is a very hard wood, like tea, being nothing of the nature of any kind of pine (pp. 125 to 128.) Assuming the bark to have been built of pitch pine, as in fact she was, the witness confesses himself not competent to state her value, (p. 127,) but still he says she was worth $130 per ton. He then proceeds to give the names and prices of various barks actually sold, (pp. 127, 128,) none of which were built of pine.

The foregoing witnesses testified to the value of the bark, believing her to be a first-class vessel in every respect, while in fact she was not, as the subsequent testimony shows:

Goff, after testifying to the size of a box of sugar (p. 128,) undertakes to give the tonnage by assuming her capacity under deck to be 2,500 boxes sugar, and so arrives at the tonnage, which may be one way of getting at transportation, but it is not measurement tonnage—forty cubic feet being simply the average standard of a ton adopted by transporters for all goods taken by measurement. This witness, however, almost exactly corroborates *Gaines*, the United States measurer, who says (p. 77) the point is to ascertain the cubic capacity of a vessel, and this divided by 100, the actual number of cubic feet in a measured ton--not a ton weight—the legal number prescribed by the act of May 4, 1864, gives the true tonnage of the vessel. Thus, if the carrying capacity be 2,500 boxes sugar, and there be allowed 10 cubic feet for each, it will produce 25,000 cubic feet, equal to 250 tons new measurement. This was the testimony on the part of the libellants.

The testimony on the part of the steamer is substantiallg as follows:

Hernandez, the builder of the bark, shows her construction and description (pp. 97, 98;) and the libellant says she was built of *pine wood*. The expression used in Spanish is "*pino ateado*." The translator has rendered this "pine wood," which is not strictly literal.

Steers, an eminent ship-builder of this city, testifies (p. 65) that it would have cost at that time from $75 to $85 per ton to have built a first-class vessel of her size in New York; that, assuming her to be a first-class vessel, she was worth $35,000, currency; but if she was built of *pine* she would not have been worth over $25,000.

Pine, another ship-builder, testifies, (p. 68,) from the description, that her value, if built of *pine*, was about $30,000. This witness speaks of new vessels.

Gaines, the measurer of vessels for the United States, with the descriptions given, testified that the barque would have measured, under deck, $304\frac{16}{100}$ tons. Cabin on deck, (if it should be included) $69\frac{79}{100}$ tons.

Total tonnage ..... $373\frac{95}{100}$ tons.

Which is the tonnage that would have been given her by the custom-house authorities here, (p. 77,) while Poillon, (p. 61,) thought at first her custom-house measurement was about 550 tons.

[The reason why her Spanish registered tonnage, namely, 477 tons, exceeds this, is explained by the testimony of Gaines, who says, (p. 77,) that their method of ascertaining tonnage consists of dividing the cubic capacity of the vessel, in feet, by $41\frac{61}{776}$, whereas we divide by 100, which is the actual average number of cubic feet to a ton of cargo.]

D. N. Carrington testified that the material of which the barque was built was inferior to many other woods used in ship building; that it is not as strong as oak, &c.; that "pino ateado" is simply pine wood, with a resinous quality; that the building was very inferior and the fitting-up in bad taste, and that altogether she was inferior to any American, British, French, or British Provinces' vessel he ever saw. He estimates her value, in currency, in December, 1865, at not over $18,000. (P. 70.)

J. W. Carrington testified that he understands the Spanish language; that the word used by Capt. Las Casas, in stating the kind of wood of which the barque was built, is a Spanish word, and means a resinous *pine;* that "pino ateado" means *pine* with some resin in it. (P. 80.)

Harding, the agent in New York of the French Lloyds, and their surveyor in this port, testified that he is surveyor, for the purpose of giving vessels a class; that Canary Island vessels are built of *pine*, nearly like the hard pine of the North; not as good as the Georgia pine; the grade or class of such a vessel would not be higher than "A 1, 3d class;" the construction of such vessels is very inferior. The description of the barque having been read to him, he says from that description, if she were new and everything complete, he would give her a five-year rate, which is the lowest rate for a new vessel; if she was three years old and still sound, he would have continued the rate for three years; that the market value of such a vessel in New York, in December, 1865, was from $30 to $40 per ton; registered tonnage, new measurement, so $373\frac{95}{100}$, at $40 per ton, $14,958. (Pp. 75, 76.)

Taylor is marine inspector for the American Lloyds, having read the description of the bark, says it corresponds very nearly to the Canary Island vessels which he has seen; that they are not equal to first-class New York built vessels; about like Nova Scotia vessels; that a Nova Scotia barque like this would be worth about $40 a ton, gold; would allow the barque $5,000 additional. This would make her worth, at his estimate, $19,958 gold. (P. 78.)

Schmidt, a shipbuilder, considered her worth in December, 1865, about $22,000. Such vessels were worth from $40 to $55 per ton, (p. 73.)

In addition to this the claimants prove actual sales of similar vessels about that time, as follows:

Dickman proved the sale of the *General Cobb*, tonnage 648, new, built in Maine, with 237 tons of coal on board, $26,500, (p. 74.)

Brown sold the bark *Pursuit*, in September, 1865, for $23,500 or $24,000, (p. 79.)

F. C. Schmidt purchased the *Harvest Moon*, an A 1½ first-class bark, in December, 1865, at New York, for $19,000, (p. 74.)

This proof of buying and selling shows that there was a market.

Sedwick on Dam., 278.
Blydenburgh *vs.* Welch, 1 Bald. R., 331.

The testimony on both sides as to value, taking it at what it would cost per ton to build a new vessel, stands thus:

Value by Pollion, (fol. 325,) the calculations being corrected—at $105 a ton	$39,513 00
Value by Steers, $25,000, less ten per cent. for depreciation, is	22,500 00

Value by Pine, $30,000, less ten per cent. for depreciation, is	27,000 00
Value by Carrington	18,000 00
" " Harding	14,958 00
" " Taylor	19,958 00
" " Schmidt	22,000 00
Being an average of	$23,418 42

Actual sales of similar vessels at about the time of the collision :

The *General Cobb* (including coal on board)	$26,500 00
The *Pursuit*	24,000 00
The *Harvest Moon*	19,000 00
Showing an average of	$23,166 66

The appellants, however, insist that the following is the fairer statement, and should be adopted by the court in ascertaining the value of the bark, viz :

Her entire tonnage, as testified to by Gaines, was $373\frac{95}{100}$—say 374 tons, from which should be deducted, as not constituting Custom-House measurement, (13 U. S. Stat., 414,) the house on deck, which was not a deck, as it had a passage way all around it, $69\frac{70}{100}$ tons, leaves as her actual tonnage, say, 304 tons, which, at $40 per ton, is $12,166, or thereabouts. In either way, however, it is clear that the value of the bark was greatly exaggerated, and the court below erred in confirming the commissioner's report thereon.

SEVENTH.

The court below laid down the correct rule of law as to the apportionment of damage.

The Milan, 1 Lushington, 388–404.
Lowndes' Law of Collision, 5.
The Atlas, Benedict, 4, p. 27, 10 Blatch., 459.
The City of Hartford, 11 Blatch., 290.
The Burrows, 7 Blatch., 374.

The case of the Gregory, 9 Wall., 513, is not at variance with this view.

We do not complain of the Judge's law. We *do complain* that he did not understand the *facts*.

EDWARDS PIERREPONT,
Of Counsel for the Alabama.

B. H. Tyrrel, Law Printer, 74 Maiden Lane.

Supreme Court

OF THE UNITED STATES.

Nicholas De Las Casas,
Libellant and Appellant,
against
The Steamtug Game Cock, her tackle, &c., William E. Gladwish,
Claimant and Appellant,
Impleaded, &c.

POINTS FOR CLAIMANT OF STEAMTUG GAME COCK.

STATEMENT OF FACTS AS CLAIMED BY STEAMTUG GAMECOCK.

That on the 15th of December, 1865, at about 11 or 12 o'clock in the forenoon, the Spanish bark Ninfa was on a voyage from Havana to the port of New York, and when off Barnegat, fifteen miles southeast of Sandy Hook, six to eight miles off shore, was taken in tow by the steamtug Game Cock and towed astern by a hawser from fifty to sixty fathoms long. That at about 6 o'clock in the afternoon of that day, the evening clear, and not yet scarcely dark, the wind blowing a good breeze from the northwest, the steamtug having three lights set and burning brightly, to wit: a red light

on her port side, a green light on her starboard side, and a white light aloft at masthead, the pilot being at the wheel, and having with him in the pilot-house a man who died before the trial as a lookout—the bark at the time having two lights set, and which were peculiarly bright, as they were set before reflectors, and could easily be seen at a distance of several miles, and she having a pilot on board and in charge, and her whole crew on deck and a man on the lookout forward, the course of the steamtug and tow being along up to the Staten Island shore, and within about two hundred yards of it, and as close as it was prudent to go, when the white masthead light of a steamer was made from the Game Cock, which turned out to be the Alabama—the course of the Game Cock at the time being between north and north and by west; soon the green light was seen, but not the red one; the lights were about a point or a point and a half in the starboard bow of the steamtug, and when first seen, the Alabama was up at Robbin's Reef Light, and "a large mile or more from the Game Cock." That upon making the lights of the Alabama, the Game Cock blew two distinct, sharp blasts of her whistle to indicate her intention of keeping to the Alabama's right; to this no answering signal was made from the Alabama, and it was claimed that it was not heard on board. When about a quarter of a mile away from the Alabama all three of the lights of the Alabama came into view on the Game Cock, still on the starboard bow, thus indicating that she had changed her course and was heading on to the course of the Game Cock and her tow. Two sharp whistles were again blown from the Game Cock, and then for the first time the wheel of the Game Cock was starboarded and her course slightly changed towards the shore. To this signal no answer was made from the Alabama, but she passed the Game Cock and without change of course, until she was nearly on to the bark Ninfa, when she was able to

get one-half turn of her engine back before she struck—striking the bark on her starboard bow so heavy a blow that she sank within a few minutes. The lights of the bark, although much higher out of the water than those of the Game Cock, and burning brightly, were not seen at all on the Alabama.

It is respectfully submitted that if the evidence fairly establishes these facts the Game Cock is without fault, and the Alabama must bear the consequences of the collision.

First.—The steamer was made off the starboard bow of the Game Cock, and was in fact on her starboard bow. This fact is established by the testimony of the following witnesses, to wit:

Pilot Watson, near bottom of page 15, "saw light on starboard bow up by Robbins' reef."

William H. Mills, engineer—page 17: "When I looked out Alabama was a half a mile ahead and towards New York, and about two points on starboard bow."

Riley—page 17: "I then looked and saw something coming; she was on our starboard bow."

Hermance, Pilot of Tug—page 18: "When I made the Alabama she was on my starboard bow."

Mathew—page 21: "The Alabama was then coming down; I saw her over our starboard bow."

"The Alabama, when I first saw her, was four cables length off—cable 100 to 120 fathoms"—thus making 2,400 to 2,600 feet off.

Martin—page 25: "She was coming down on our starboard bow."

Rodriguez—page 27: "She was then in front of us, on our starboard side." "Saw Alabama before Game Cock whistled."

Vidal—page 29: "When I first saw her she was on the starboard side of the Game Cock."

St. Anna—page 31: "Saw Alabama when Game Cock whistled; she was then to starboard of Game Cock."

Castro—page 32: She was then coming towards our starboard bow.

Cabrera—page 33: The Alabama was nearly abreast of her starboard side, and three or four points to the starboard of the course of the Ninfa, towards the Gamecock.

Perez—page 34: When I first saw the Alabama, she bore on the starboard bow of the Ninfa; can't say how much, three or four points.

Sanchez—page 36: The Game Cock was right ahead of the Ninfa, and the Alabama to the starboard, considerably farther off, at least twice the distance.

Hernandez—page 38: The Game Cock was directly ahead, and the Alabama on the starboard bow of the Ninfa.

Perez—page 41: She, (the Game Cock,) was right ahead, and the Alabama was on the starboard side.

Las Casas, pages 44 and 45, gives a detailed account of the movements of the vessel with a diagram.

To oppose this overwhelming mass of testimony, we have the evidence of five witnesses on the part of the Alabama, who were paying so little attention to the navigation of the vessel and approaching objects, that the signals of the Gamecock was not heard, and the lights of the Ninfa not seen.

Second.—It is claimed on the part of the Alabama, as a fault, that the Game Cock being only two hun-

dred feet distant, and two points on the port bow of the Alabama, by a sudden and rank sheer crossed the bow of the Alabama.

This is rebutted by the fact that it would be impossible to have accomplished it within that space, especially when taking into consideration the rapidity with which the combined speed of the two vessels was bringing them together, and the additional fact that at the time of the collision, the Ninfa was following in the wake, and exactly after the Game Cock.

Third.—The fact that the Ninfa was following in the wake of the Game Cock, shows that whatever change the Gamecock made upon her starboard wheel, must have been gradual, a rank sheer would have sent the bark nearly the length of the hawser upon her original course before she could have commenced to follow the course of the Game Cock.

Fourth.—The fact that the Ninfa was following in the wake of the Game Cock, strengthens the testimony that the Alabama was, in fact, on the starboard bow and side of the Game Cock at all times before the collision.

Fifth.—The original testimony of Martino, the pilot, which he endeavors to get rid of on his re-examination, and the quarter-master at the wheel, also testify that the wheel of the Alabama was ported, and then she was steadied, and only starboarded when the vessels were coming together and without effect.

This testimony strengthens the other testimony that the Alabama was on the starboard bow of the Gamecock.

Sixth.—The testimony of Captain Limeburger, page 141, gives a plan of the lower part of the harbor and the Narrows, as well as where the collision actually took place.

The usual course of steamers is down the center of the harbor, and there is nothing in the evidence that, before she reached the Narrows but that she was in that track, and she could not have reached the point of collision without having run in nearly half a mile on a port wheel.

Had she been running closer when abreast of Robbins' reef light, she still could not have reached the point of collision except upon a port wheel. Had she given the point of land at the place marked red, a safe distance, still she could not have reached the point of collision, except upon a port wheel.

These facts would appear to be conclusive that she did port in order to reach the place of collision, and that the Game Cock had the Alabama upon her starboard bow when taken in connection with the manner of the collision.

Eighth.—The Game Cock blew two blasts of her whistle when the steamer and herself were a large mile or more a-part (see testimony of Hermance, page 19); she again blew when she was a quarter mile away. and when she discovered that the Alabama had changed her course, and was heading for her.

She had the right to assume that her presence was known and her signals understood.

Ninth.—She had passed to the westward of the Man-of-war shoals, and it was her right to hug the western or Staten Island shore, and the proximity of her lights to that shore should have been evidence to the Alabama, aside from the signals which

she gave, that such was her intention, and the Alabama should have governed herself accordingly.

Tenth.—When the Game Cock saw that the Alabama was closing in on her, stopping would only have brought the Alabama down upon her, and her only alternative was to give two blasts starboard and keep on, leaving the Alabama to a counter movement which would have prevented a collision.

Eleventh.—The change of heading upon the starboard was but very little, and was she justified in making it? We answer yes, because:

I. She had the Alabama upon her starboard hand, and the only mode of escaping was to starboard and blow two whistles as a signal of her intention to keep to the right of the Alabama.

II. The Alabama not having blown the signal of keeping to the right, justified and rendered it necessary for the Game Cock to blow two whistles.

III. There was no time for her to blow a single whistle and port.

Twelfth.—She gave the signal of two whistles and made the change in time for the Alabama to have made a counter movement and saved a collision had she been navigated as she ought.

Hermance, page 29: "When I saw her a quarter of a mile off I blew my whistle for her to keep her wheel to starboard."

Mathew, page 22: "It was eight or ten minutes before the collision that I heard the whistles blown. The Alabama, when I first saw her, was two or three times the distance between the bark and the tug off from the bark."

Rodriquez—page 28: When I first saw the Alabama I could see her starboard side; when I first saw the Alabama she was as much to the starboard of the Game Cock as is shown on the diagram Mariaco Sanchez, but she did not head so much across the course of the Game Cock; she had run down more on a parallel.

Vistol, page 29: When I first saw her she was on the starboard side of the Game Cock; could not say how much. Page 34: When I first saw the Alabama she was far off, but I cannot tell the distance.

St. Anna, page 31: She was then to starboard of Game Cock.

Cabrera—page 33: "The Alabama was nearly abeam of the Game Cock, and three or four points to the starboard of the course from the Ninfa to the Game Cock.

Perez—page 34: "When I saw her she was three or four times the distance between the bark and the tug off from us, and bore from us a little to the starboard of the tug."

Sanchez—page 36: "The Game Cock was right ahead of the Ninfa, and the Alabama to the starboard considerably further off, at least twice the distance."

Hernandez—page 38: "The Alabama was a little further off than the Game Cock. If the Alabama had kept straight on in the direction she was when I first saw her, she would have passed to the starboard of us; she had plenty of room on that side."

Perez—page 41: "If the Alabama had kept right on on our starboard side, which she could easily have done, there would have been no trouble."

Les Casas—pages 44 and 45:

This testimony would seem to establish the fact that the measures of the Game Cock were taken in ample time to avoid the collision, and all that it required was corresponding action on the part of the Alabama.

Thirteenth.—The only remaining charge of fault on the part of the Game Cock is, that she did not show vertical lights, indicating that she had a tow. This should form no ground upon which the tug should be charged because :

I. It is not charged as a fault in the answer of the Alabama, and by their answer they are bound.

II. They do not charge that they were misled by it in their answer.

III. They should have known the position of the Game Cock had any proper lookout been kept, and should have given her a wider berth than twenty feet.

IV. The Ninfa's lights were set and against reflectors, and could and should have been seen at a greater distance than the lights of the tug.

V. The lights of the bark were visible above the tug, and were not obscured by sails, and, with even an approach to a lookout, she should have been seen at a long distance.

VI. She had a red and a green light set, and no man with nautical experience and knowledge could have supposed her to have been a vessel at anchor, which requires white lights set in the rigging.

VII. The bark's sails were allfurled, and there was nothing to obstruct the lights of the bark from being seen.

The Alabama had no right to be without a proper lookout—give no proper attention to approaching objects—carefully shuts their eyes until she is upon another vessel, and then charge the absence of a particular technical requirement as a ground of fault.

We respectfully and confidently submit that the navigation of the Alabama is covered with faults.

Fourteenth. — She had no lookout—upon this point the proof is positive and conclusive. The only show of a lookout is the quartermaster who was stationed in the pilot house, not to look out, but to assist the other quarter master at the wheel.

The truth is, the tug was not seen until the Alabama was almost on to her, and the Ninfa was not seen at all until the instant of the collision, and after repeated hails from the tug and bark.

When seen, the Alabama, instead of starboarding, ported, and threw herself npon the course of the tug and upon the bark.

When she should have starboarded she ported and then straightened upon her new course and starboarded, if at all, when it was too late to save the collision.

The Game Cock blew two whistles when the vessels were more than a mile apart. This should have been heard and answered. She was again signalled at the distance of a quarter of a mile and to this signal gave no answer.

She should have starboarded and given the tug and tow a wide berth, and there was nothing to prevent it; she had the whole bay to the east. She preferred to shave the tug, if she saw her before she was on to her, within twenty feet.

If she could not have cleared the Game Cock in her judgment when the second signal was given, she should have given danger blasts and stopped and backed.

There was no obstruction in all the channel to the eastward of the course of the steamtug, which was close to the west shore, and she should have kept the usual course down the centre of the channel. There is no excuse for not pursuing this course.

Her crew were down at their supper, and when boarded by the crew of the Ninfa not a soul was in the forward part of the steamer. This is a gross fault.

We submit that the decree as to the Game Cock should be reversed, and the Alabama condemned to pay the whole damages.

The Game Cock being of inferior value, it is not important to discuss either the value of the bark or the question of apportionment, as a decree of condemnation would mulct the Game Cock in a sum far exceeding her value in whatever aspect the matter is viewed by the Court.

W. R. BEEBE,
Counsel for Tug Game Cock.